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## Current Topics.

### A Great Litigation Recalled.

BY THE death this week of Lord JOHNSTON, who was for many years a judge of the Court of Session in Scotland, retiring in 1918, memories are revived of the famous *Free Church Case* in which he was leading counsel for the body who became popularly known as the "Wee Frees." Both in the Court of Session and in the House of Lords, Mr. JOHNSTON, as he then was, fought strenuously on behalf of his clients, and in the Lords he succeeded in securing the assent of the majority to his contention that the union of the Free Church of Scotland with the United Presbyterian Church of Scotland was incompetent in that it did not carry with it the right to the property of the former body, which therefore remained in the remnant of the Free Church, which declined to enter the union. The late Lord HALDANE, who, with Dean of Faculty ASHER, argued the case on behalf of the respondents, said in his autobiography that "it is hardly an exaggeration to describe this as probably the greatest litigation of its particular kind which ever occurred in our history. More than two millions of money was claimed against those who had in the main subscribed it along with their predecessors, by a small minority of the Free Church of Scotland, who had declined to concur in the union." The appeal was twice argued, the second time in consequence of the death of Lord SHAND before the judgment was ready for delivery. On the second occasion Lord JAMES OF HEREFORD and Lord ALVERSTONE were called in, and they swelled the majority in favour of allowing the appeal, Lord MACNAGHTEN and Lord LINDLEY being the dissentients. The result was a crushing blow to the United Free Church, and feeling was intense in Scotland against those composing the majority of the law lords, one old Scottish minister declaring that the Lord Chancellor (Lord HALSBURY) appeared not to know the difference between a body of Christians and a trade union! The report of the case in the Law Reports—[1904] A.C. 515—runs to no fewer than 250 pages. On purely legal grounds the decision was severely criticised by a number of distinguished writers, and indeed it was speedily recognised that its effect must be largely nullified, as it was by the Churches (Scotland) Act, 1905, which set up a Commission for the allocation between the successful Free Church and the unsuccessful United Free Church of the property affected by the decision of the House of Lords. Rarely has Parliament intervened with such promptitude to remedy what it regarded as an injustice consequent on a judicial decision.

### Sir John Simon, Broadcaster.

THE MAN in the street knows Sir JOHN SIMON as one of the leaders of a not quite united party, but a man who, having achieved much in more than one walk of life, may still achieve more. Lawyers know him as the most brilliant advocate of his day, a man who might easily have been Lord Chancellor, who, indeed, may yet be. And everybody has heard of the fabulous income he has made, or is supposed to have made, at the Bar. But the man in the street, or rather the man with the wireless set, had a sudden revelation of Sir JOHN's gifts, when Sir JOHN spoke for twenty minutes to broadcast his views on the impending election. With the matter of his speech, and with its politics, we are not here concerning ourselves. It was the manner of it that astounded those who as yet had had no first-hand knowledge of Sir JOHN. Here were all the best arts of advocacy; an easy, intimate, unassuming style of address; the best choice of words uttered without accent (which is so much better than the exaggeration and distortion so often miscalled the Oxford accent); the momentary pause, followed by a sudden emphasis, as if the speaker himself had just thought of something important; the flattering assumption that we electors are all intelligent, so that we only need to hear plain facts to be able to exercise sound judgment; the air of taking us into his confidence; the absence of heat or invective—instead, a polite inquiry whether the other side are really quite equal to the task they profess to be able to perform; and, finally, the faint touch of sentiment in the reference to the old lady by the fire, who turned out to be the speaker's own mother! Not every great lawyer, not every past President of the Union, can "get it across" on the wireless; and even Sir JOHN SIMON, with his many great achievements, may feel a little pride in having set men of all classes and of all political colours talking next morning about "the most wonderful broadcast this election so far." As one listener put it: "Now I can understand why a man like that can earn £40,000 a year at the Bar."

### Testamentary Dispositions subject to Religious Disabilities.

OPINIONS MUST ever differ upon the justice of making a bequest upon the legatee's being or not being a member of a particular religious persuasion. But all will be at one in welcoming the decision of the Court of Appeal, in *In re May; Eggar* v. *May*, to the effect that "being or becoming" a member of any faith—in that case a Roman Catholic—involves among other things an exercise of choice not open to persons under age. The case was one in which a testatrix created trusts in favour of a nephew to take effect "provided that he shall not be a Roman Catholic at my death, or being a Roman Catholic at my death shall cease to be a Roman Catholic before the expiration of twelve calendar months after my death, until he shall after my death become a Roman Catholic." She died in 1915, and the nephew, who was born in 1906, had at all times been a Roman Catholic. On a summons to decide whether he was entitled under the will, LUXMOORE, J., decided that he was not. The case had been in 1917 before NEVILLE, J., who held that the nephew was at that time not entitled. THE MASTER OF THE

ROLLS, in a judgment upholding the decision of LUXMOORE, J., said that NEVILLE, J., had decided that the nephew, being only eleven years of age at the time of the testatrix's death, could not "be" or "cease to be" a Roman Catholic as by the will required, and had decided also that a legatee would not, under such circumstances as these, be deprived by the court of benefits under a will, "until he was of an age to judge for himself." "That," continued THE MASTER OF THE ROLLS, "was the effect of *Patton* v. *Toronto General Trusts Corporation* [1930] A.C. 629." But the law could give the legatee no further help, for, by remaining a Roman Catholic after attaining twenty-one, he had "become" a Roman Catholic within the meaning of the will, and so had forfeited his interest. Those, however, who deprecate the attaching of such conditions to bequests may derive some satisfaction from the definite establishment of the principle that intended beneficiaries cannot break those conditions except by the exercise of their own choice when they are of full age.

### An alleged Infant Candidate.

IT IS stated that a certain candidate for Parliament, duly nominated and whose nomination has been accepted by the returning officer, is now an infant, and will be so at the date of the election. The law as to the age of members of Parliament is not of course in doubt. By s. 7 of 7 & 8 William III, c. 25 (1696), it is declared that no person shall be capable of being elected a member of Parliament who is not of the age of one and twenty years, and every election of any such person is declared null and void. Moreover, it enacted that if a minor should presume to sit and vote in Parliament, he should incur such penalties and forfeitures as if he had presumed to sit and vote without being chosen or returned. The situation if an infant should present himself for nomination is not, however, so clear. Certain cases have been decided as to municipal elections, for example the *Bangor Case* (1888), 13 A.C. 241, and *Harford* v. *Linskey* [1899] 1 Q.B. 852, from which it may perhaps be deduced that, under the Acts relating to such elections, returning officers have no right to decide on the eligibility of a properly nominated candidate. There was, however, a saving in the judgment in the latter case (see p. 862) in that the judges did not understand the *Bangor Case* to be a ruling that a nomination cannot ever be rejected except for informality in form or presentation of it. The only case on the return of an infant to Parliament appears to have been that of *The County of Flint* (1797), 1 Peck 526. There the sheriff accepted the nomination of his brother-in-law, Sir THOMAS MOSTYN, a youth of twenty, in the face of the protests of the other candidates, and, Sir THOMAS polling the most votes, declared him duly elected. Several petitions against him being presented, Sir THOMAS, no doubt under advice, deemed it prudent not to defend his return, which the Committee of the House of Commons then considering the matter thereupon declared to have been "vexatious." The return of an infant would no doubt, on proof of the fact on petition, be held void, but an election would not necessarily be avoided if the infant was an unsuccessful candidate, especially if electors threw away their votes on him with full knowledge of his disqualification. MAY records ("Parliamentary Practice," 13th ed., p. 31) that CHARLES JAMES FOX was returned for Midhurst when he was nineteen, and sat and voted in Parliament notwithstanding the above Act, and also that Lord JOHN RUSSELL was elected for Tavistock a month before his majority.

### Theatre-Queue Rights.

MOST OF the cases as to queues have been in respect of the nuisance caused to neighbouring tradesmen or property-owners, as *Barber* v. *Penley* [1893] 2 Ch. 447, and *Lyons* v. *Gulliver* [1914] 1 Ch. 431. A correspondent of an evening newspaper, however, raises the question as to the rights of a member of a queue to maintain his position in it by leaving his stool on the spot he has occupied if he departs for a time. The correspondent suggests that, if someone "jumped" the place in the member's absence there would be trouble, and there can be little doubt of that. The interloper, disregarding what may be called the unwritten law of the queue, would certainly be a most unpopular person. The question of legal rights, however, is a different one. A queue, so far as it is on a public footway, is no doubt an obstruction to the pavement, which the police have power to break up by ordering its component parts to move on. One may suppose that, in the normal case, the obstruction is of such trifling nature that the police do not wish to interfere, and that there is a sort of concordat between them and the theatre-owner, who presumably also owns the pavement, subject to the public right, or has made suitable arrangements with the owner of the pavement. In such case the members of the queue are licensees or perhaps invitees of the proprietor, though until they actually take their tickets they can hardly have the contractual rights indicated in *Hurst* v. *Picture Theatres Ltd.* [1915] 1 K.B. 1. In the absence of those contractual rights the licence for them to remain in their places must be revocable at any time. Such a licence, one may suppose, would not guarantee quiet enjoyment of a position taken up, even to one who remained in it, and still less to the absentee. The matter would resemble the appropriation of a seat in a train by a hat or bag. To sit down on another's stool might be trespass, but that would cease if the seat were handed to the owner. As a practical matter, probably the first-comer would either call in aid a policeman, who, after hearing the testimony of adjacent members of the queue, would order the interloper to take himself to the bottom of it or elsewhere, or, as they were taking their tickets, they would inform the man selling them that A had jumped B's place, and that therefore B should have the ticket that A sought, and A should be relegated. There could be little doubt that the seller of the tickets would accept this suggestion, and so again the interloper would be foiled. The police in fact do regulate queues, and banish those who attempt to "muscle in" to the rear, and, in their function of keeping order and preventing breaches of the peace, it may be supposed that a magistrate, on any test of the matter, by charge of assault or otherwise, would hold such action on their part justified. If so, queue law is good administrative law, for the place in the queue is recognised and protected by the law's administrators.

### The Court and the Court Dressmaker.

CASES ON feminine matters, such as dress bills and breach of promise, appear to gravitate to MCCARDIE, J., and the Press eagerly awaits the comments he makes from, as the showman put it, "them lawfty 'eights" of bachelordom. In the case of *Bermel* v. *Breskal*, *The Times*, 21st October, no doubt he fulfilled expectations, but in the matter of scolding ladies for extravagance of attire, the prophet ISAIAH still maintains his pre-eminence. The judge observed that "whenever a man bubbles with amorous instinct, he is going to allow a woman to be extravagant." *Contra*, however, JOHN GILPIN: "Although he was on pleasure bent, he had a frugal mind." The next Government, preaching, and, it is to be hoped, practising economy, may have an acid test of courage in overhauling the law as to debts incurred by married women. If, as between themselves and costumiers, they were made jointly and severally liable for their dress bills with their husbands, and a judge had power to lift the restraint from the income of a woman who preferred to live in continual luxury rather than discharge her just debts, a considerable number of feminine cheats would suddenly find reasonable economy the lesser evil, and honourable credit would be strengthened. Presumably also the tendency would be to reduce prices, for dressmakers in order to make a profit must naturally charge bad debts to honest and solvent customers.

## Criminal Law and Practice.

BLACK ART CONFOUNDED.—The gentle Mr. Fearn, who at the Old Bailey on the 19th October, asked for penal servitude and got it, seven whole years of it, is an interesting compound of impudence and futility. In the manner of a bold bad magician weaving a spell which shall change his victim into a cringing slave, toiling to pay tax to his master, he concocted a threatening letter of the common mysterious type, wherein the usual clichés of "certain proofs" and "exposure without mercy" figured as the main ingredients. He was duly met by the potent counter-magic of the police. Better still, his intended victim, who had, incidentally, done nothing to induce the wizard's hate, stood boldly forth, and not only prosecuted, but desired no concealment. Asked if he wished his name to be suppressed, Mr. Carpenter, a clerk in holy orders, said: "Certainly not. I have nothing at all to conceal." Collapse of the spell-binder! He departed vapouring. "Whatever sentence you deal out to me I shall certainly settle with him when I have finished." That is idle breath so far as a courageous man is concerned, but if Mr. Fearn is not sufficiently damped in his desire to hold his fellows in the fetters of fear, and tries to settle with Mr. Carpenter, we are not unhopeful that he will catch another fall, and be in a position to ask for another seven years' penal servitude.

SUICIDE PERMITS.—Magistrates, who have already some cause of complaint that Parliament so often casts new and troublesome duties upon them, will devoutly hope that the Bill drafted by the Medical Officer of Health for Leicester, and explained by him in his presidential address to the Society of Medical Officers of Health, will never become law.

Dr. Killick Millard's proposal is that voluntary euthanasia in certain circumstances and subject to proper safeguards and restrictions should be legal; or, in plainer language, that certain unhappy people suffering from incurable and painful maladies who desire a speedy and painless end should be able, after filling up forms, procuring medical certificates, submitting applications to a referee and finally to a court of summary jurisdiction, to commit suicide with the help of a duly authorised doctor.

The dangers are obvious, though the Bill is certainly designed to minimise them. The number of sufferers who would go through all the gloomy business, and the number of medical men who would care to participate in it, is problematical. The responsibility of magistrates called upon to decide whether or not to permit euthanasia would be almost unbearable.

It is perfectly true, of course, that a few men and women who would welcome death and who would wish to accomplish it for themselves are deterred by the fear of casting a reflection upon the relatives they love by an act of self-destruction characterised as felony by law. Doctors are naturally unable to assist in such an act because the law would call it murder. Therefore, fantastic as the proposal seems at first sight, one can discern in it, if not a practical proposal for the present day, a useful piece of propaganda. Apart from religion, is it right to condemn suicide as a crime or a sin if it be the action of a sufferer who feels that it is the best he can do, not merely for himself, but for those around him to whom he is a burden, an expense and a source of distress? Better than legalising suicide by statute would be a more generally kindly, intelligent attitude towards the class of suicide whom the Bill aims at helping.

### WESTERN CIRCUIT ASSIZES.

The following days and places fixed for holding the Autumn Assizes are announced in the *London Gazette*:—

Western Circuit (2nd Portion).—Mr. Justice Acton and Mr. Justice Charles.—Wednesday, 11th November, at Bristol. Mr. Justice Acton.—Wednesday, 18th November, at Winchester.

## Nationality *v.* Domicil.

IT is a principle of English law that all matters of personal status, all matters relating to succession to personality and family law in general are to be governed by the law of domicil instead of by the law of nationality. BARTIN in his "*Principes de Droit International Privé*," writes: *Les obligations légales de chacun des époux envers l'autre, les obligations légales des ascendants envers les enfants et réciproquement, plus généralement enfin, les obligations légales de tous les parents entr'eux, ne sont que l'expression du lien de famille ou de filiation qui unit chacune de ces personnes à toutes les autres. Ce lien, c'est la loi nationale qui a seule qualité pour le fixer, parce qu'elle seule a qualité pour déterminer la mesure dans laquelle chacune de ces personnes peut compter sur les autres.*" The interest of this extract for the purposes of the present brief article lies in the second sentence, namely, that the law of nationality can alone determine to what measure relatives, whether by blood or marriage, can count upon one another, and it will be submitted in the course of this article that the English conception of the *renvoi* to the law of domicil tends to create uncertainty, without any adequate *quid pro quo*. DICEY, in his "Conflict of Laws," writes: "The object of a legal decision or judgment is to enforce existing rights, or give compensation for the breach thereof, and it is not the object of a legal decision or judgment to create new rights, except in so far as may be necessary for the enforcement or protection of rights already in existence." It is submitted that the application of the law of domicil in place of the law of nationality does in fact create new rights. Let us take a simple illustration. A British subject acquires a French domicil of choice, but he does not thereby acquire any of the advantages conferred by French law in regard to testamentary rights. He is unmarried and has quarrelled with his father, who is domiciled in England and has made a will "disinheriting" the son. Yet owing to the incidence of the application by the English courts of the law of domicil, if the son predeceases the father the latter will be entitled to and cannot be deprived of one-quarter absolutely of the son's estate. In other words, a new right has been created, namely, the right of the father to a fourth share in the son's estate, whereas the son has no corresponding right to a share in the father's estate. This is, of course, only a simple imaginary instance, but cases of a similar nature occur in practice, principally in regard to testamentary matters. The reasons in favour of the application of the law of domicil in preference to that of nationality appear to lie in the consideration of the practical application of such law more than in the consideration of what is equitable, and DICEY considers that the law of domicil is likely to be more effective. If, however, we take as an example, Italy and France, in which the system of law is very similar, we find that the English courts have decided that the Italian courts would reject the *renvoi* and apply the national territorial law (*In re Ross; Ross* v. *Waterfield*), but that the French courts would accept the *renvoi* and apply the law of domicil (*In re Annesley; Davidson* v. *Annesley*). In fact, as has already been stated in your columns, the decisions of the French courts for and against the acceptance of the *renvoi* are about equally divided, with a tendency at the present time to reject the *renvoi*, so that far from the application of the law of domicil being effective in regard to British subjects domiciled in France, it merely leads to doubt and uncertainty. The object of this article is to draw attention to what may be considered to be a legitimate grievance of British subjects domiciled abroad in countries in which the *renvoi* to the law of domicil is accepted.

Mr. Frederick Rich Date Clutson, of Tiverton, Devon, solicitor, clerk to the Tiverton Borough and County Benches, and coroner for the borough, left estate (so far as can at present be ascertained) of the gross value of £21,149, with net personalty £19,381.

# Civil and Criminal Law Mixed.

ENGLISH legislation has, in general, kept the distinction between civil law and criminal law sharply drawn, as regards both rights and remedies. The nearest approach to the French *partie civile* procedure is perhaps the power to award compensation, immediately *after* a conviction for felony, under the Forfeiture Act, 1870, and one might mention vesting orders which may, under certain circumstances, be made when convictions are made under the Larceny Act, and the power to award compensation to a prosecutor who obtains a conviction under the Malicious Damage Act.

But in the case of certain offences relating to the property of friendly societies and trade unions, the Legislature, for reasons sufficient to itself, as Lord HALSBURY put it (in *Vernon* v. *Watson* [1891] 2 Q.B. 288, C.A.), has seen fit to depart from the general principle, and created remedies which are partly civil and partly criminal. It is not surprising that magistrates called upon to administer the provisions in question have sometimes been at a loss to know what exactly was expected of them.

The Trade Unions Act, 1871, s. 12, runs: "If any officer etc. . . . by false representation or imposition obtain possession of any moneys, securities, books, etc. . . . or having the same in his possession wilfully withhold or fraudulently misapply the same, or wilfully apply any part of the same to purposes other than those expressed or directed in the rules . . . the court of summary jurisdiction . . . upon a complaint made . . . may by summary order . . . order such officer etc. to deliver up all such moneys etc. . . . or to repay the amount of money applied improperly, and to pay, if the court think fit, a further sum of money not exceeding £20, together with costs not exceeding 20s.; and, in default of such delivery of effects, or repayment of such amount of money, or payment of such penalty and costs as aforesaid, the said court may order the person so convicted to be imprisoned, with or without hard labour, for any time not exceeding three months; provided, that nothing herein contained shall prevent the said trade union from proceeding by indictment . . .; provided also, that no person shall be proceeded against by indictment if a conviction shall have been previously obtained for the same offence under the provisions of this Act."

It should be noted that the previous section provides a purely civil remedy, as regards balances due, in the case of officers under a duty to render accounts.

The Friendly Societies Act, 1896, s. 87 (3) and (5), are in substantially similar terms, except that "withhold" is not qualified by "wilfully," nor "misapply" by "fraudulently." The statute is a consolidating one, and repealed Acts all contained a similar section.

It would seem that Parliament intended to provide an inexpensive procedure by which trade unions and friendly societies who have "left the cat to look after the cream" may have the supply replaced *and* the animal punished; but what has puzzled magistrates is, whether, having regard to the wording, the procedure would be applicable in a case, say, of negligence or obstinacy without *mens rea*. Further, in the event of conviction, is the power to imprison to be used as a means of vindicating the rights of the community, or is it merely to be employed as a stimulus which may induce, say, a defaulting treasurer to make more serious efforts to raise the money than he otherwise would?

The first point was considered by a Divisional Court, on a case stated, in *Barrett* v. *Markham* (1872), 36 J.P. 535. On a charge, against the treasurer of a friendly society, of unlawfully withholding and misapplying moneys, it was proved that he had rendered accounts showing a balance due from him, and had stated that he was unable to pay what was owing. No allegation of fraud or misrepresentation had been made, and the magistrates had dismissed the summons. The court upheld them, taking the view that there was no jurisdiction unless the conduct of the respondent "bore the character of fraud." The mere refusal and inability to pay would not justify a conviction. Emphasis was laid on the words "by false representation or imposition" at the commencement of the section (which, it might be observed, do not appear to qualify "withholding"); on the penal consequences; and on the fact that there was another section (s. 55 in the present Act) conferring a purely civil remedy.

This decision may have deterred the magistrate in *R.* v. *Bennett and Ward* (1894), 63 L.J. M.C. 181, from issuing a summons on a complaint against a club steward when the information merely stated that stocktaking had revealed a shortage of liquor and a failure on the part of the steward to explain it; the Divisional Court held that these two facts constituted a *prima facie* case, and process should issue. The case is, of course, an authority on evidence rather than on the sections with which we are dealing; but "something of a criminal nature" was considered a necessary ingredient.

*Barrett* v. *Markham* was approved in *Madden* v. *Rhodes* [1906] 1 K.B. 534, in which a trade union complained of a refusal by branches, who were engaged in a controversy with the head office, to deliver up books, etc. It was held that the section did not apply; there was another section (s. 9) which should have been invoked. Subject, then, to remarks made in an unreported case, which I will deal with later, the law appears to be that, unless criminality can be proved, proceedings should not be taken in a police court.

The sanctions provided by the sections were analysed by a Divisional Court in *Knight* v. *Whitmore* (1885), 53 L.T. 233, and by the Court of Appeal in *Vernon* v. *Watson* [1891] 2 Q.B. 288. A conviction had been obtained, repayment ordered, and a sentence of two months' hard labour in default given and served; then (in one case, after a distress warrant had been applied for and refused), a writ was issued. The defendant objected that the debt had been discharged by his imprisonment, and the court in each case agreed with this view: the proceeding was both criminal and civil, but as regards the civil part of the remedy, sentence corresponded to judgment, imprisonment to execution.

The question arose again in *R.* v. *Truscott* (1899), 81 L.T. 188. Two trade union secretaries admitted (the report does not say "pleaded guilty to") charges of wilfully withholding. No application was made for a penalty, and the magistrate (an alderman of the City of London) ordered repayment within twenty-eight days, and 20s. costs, distress and sale in default. The order was drawn up on a "Civil Debt" form. No results having been obtained, an application to commit to prison was made and refused. A writ of *certiorari* was then applied for; the Divisional Court held that the magistrate might have taken the wrong view, said that he could have ordered imprisonment, but ruled that, as the orders made were in accordance with the statute, *certiorari* could not issue.

From a report which appeared in our contemporary the *Justice of the Peace* in the issue of 29th November, 1930 (Vol. 94, p. 745), it appears that the Bow-street magistrate, in dealing with one of these cases, had referred to a direction given by the Divisional Court when reversing part of an order made by the Lambeth magistrate a year before. The part reversed provided for enforcing repayment as a civil debt, and the Divisional Court stated that, in their opinion, on the facts stated, the magistrate "should have found that there was misconduct of a criminal character"; they remitted the case, adding that the magistrate was not bound to order imprisonment, but could treat the matter as a civil debt. In so far as this direction lays it down that there is a discretion, it may be called helpful; but when it comes to considering how discretion should be exercised, the words we have put in inverted commas merely add to the confusion—for have not previous decisions laid it down that, unless there be fraud, which is surely always of a criminal character, the section does not apply at all?

MR. PHILIP H. MARTINEAU, B.A.
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President of The Law Society, 1931–32.

# Company Law and Practice.

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(*Continued from p.* 693.)

## RE-ISSUE OF DEBENTURES.

THE re-issue of debentures by a company did not receive the sanction of the Legislature until the year 1907, and before such sanction was given a good deal of trouble and difficulty arose, owing to the fact that, when a company redeemed its debentures, creditor and debtor became the same entity, and the debt was extinguished with such finality as to preclude any possibility of its being revived. At the present day, however, a company is given considerable freedom, for, unless any provision to the contrary, either express or implied, is contained in the articles or in any contract entered into by the company, or unless the company has manifested its intention that the debentures shall be cancelled, a company has, and is deemed always to have had, power to re-issue any debentures previously redeemed, whether such redemption has taken place before or after the 1st November, 1929. The same debentures may be re-issued, or others may be issued in their place, but in either case the holder of such debentures has the same priority as if the debentures had never been redeemed. Section 75 of the Companies Act, 1929, is the section which now governs the re-issue of debentures, and I would refer those of my readers who desire to cover the whole ground relating to re-issue to the terms of the secion itself; to-day I wish to mention one or two points which in practice may arise when a re-issue is contemplated.

First of all, with regard to stamps. It must not be supposed that it is possible, by means of a re-issue, to make any saving in stamp duty as compared with a new issue, for such is not the case; the section expressly provides (by sub-s. (5)) that a re-issue (whether by the re-issue of the old debenture, or by the issue of one in its place) is to be treated as the issue of a new debenture for the purposes of stamp duty.

The second point which I wish to make, and which is purely a matter of practice, is that, in cases where the old debenture is re-issued, it should also be re-sealed. If the re-issue is effected by issuing another debenture in the place of that redeemed, it is, of course, clear that the new debenture ought to have affixed to it the seal of the company, but it is sometimes said that nothing of the sort is necessary in the case of a previously issued debenture, which already, in the ordinary case, contains a covenant to pay, and a charge. These, however, have been in abeyance, if only for a comparatively short space of time, and some evidence ought to be made easily available of their release from this state of suspended animation, and the date on which it is effected. This evidence is furnished by a re-sealing, which should, in every case, be insisted upon.

Lastly, there is the question of registration to be considered. Section 79 provides for the registration of charges created after certain dates; and it is accordingly necessary to determine whether or not a re-issued debenture creates a charge within the meaning of that section. The case of *Re New London Suburban Omnibus Co.* [1908] 1 Ch. 621, is one which may be examined in this connexion, though it is not directly in point. In that case a company, in the year 1898, executed a trust deed for securing an issue of debentures, which trust deed contained a conveyance and assignment of all the property of the company, present and future; shortly after the execution of this deed debentures were issued which were entitled to the benefit of the trust deed. Seven of these debentures, for £100 each, were issued to A for cash, and in 1902 the company purchased these debentures from A at a small discount, and they were transferred to U, who was a nominee of the company. In the year 1905 R advanced to the company £670 in cash, and the debentures vested in U were delivered up to the company and cancelled, and a single fresh debenture for £700, in the same form as the other debentures, was issued to R. This debenture was never registered. The dates of these transactions are material, because of s. 14 of the Companies Act, 1900, which came into force on 1st January, 1901, and for the first time required the registration of various forms of charge created by a company after the commencement of that Act, which, unless registered, were to be void against the liquidator; this section being, of course, the precursor of the present s. 79.

It is also material to remember that the Companies Act, 1907, permitted for the first time the re-issue of debentures, and that it had a retrospective effect. The company went into liquidation, and a debenture-holders' action was also commenced, and a question was then raised as to whether R's debenture was entitled to rank with the debentures of the original issue, it being said that it ought to have been registered under the 1900 Act. For the determination of this, the question to be answered is, when was the charge created? NEVILLE, J., answered this by saying that the charge ran from the execution of the trust deed, and then held that R's debenture had been properly re-issued under the 1907 Act.

The learned judge, in his judgment in that case, did raise the point as to whether registration would be required on the re-issue of a debenture originally requiring registration, but it was not necessary for him to decide it, and he did not do so. It seems clear, on principle, however, that in such a case there is no "creation" of a charge within the meaning of s. 79 of the Companies Act, 1929, whether the debentures are entitled to the benefit of a trust deed or not, for the charge is already in existence, and is only revived by the re-issue. If a memorandum of satisfaction had been entered on the register the position would be different, but in such a case it is most unlikely that a re-issue would be possible at all.

(*To be continued.*)

# Mr. P. H. Martineau, B.A.,

SOLICITOR.

We have pleasure in including in this number a portrait of Mr. Philip H. Martineau, who is this year's President of The Law Society. Mr. Martineau is the son of Mr. Hubert Martineau, to whom he was articled, and being admitted in 1888, joined his father in partnership at 2 Raymond-buildings, Gray's Inn soon afterwards, becoming senior partner of the firm (Martineau & Reed) in 1893. He was educated at Harrow and graduated at Trinity College, Cambridge. Mr. Martineau has been an active member of the Council of the Law Society for upwards of twenty years, serving on the following committees: Land Transfer, Professional Purposes, Solicitors' Remuneration and Examination; of which latter he has been chairman for so long. His principal recreations are now confined to shooting, fishing and golf, though in his younger days he was a good allround cricketer.

# A Conveyancer's Diary.

**Searches on Purchase of Registered Land from a Company.**

My attention has recently been called to the question whether a purchaser from a limited company of land of which the company is registered as proprietor with an absolute title under the L.R.A. 1925, ought to search the Companies Register at Somerset House to see whether there are any charges affecting the land registered under s. 79 of the Companies Act, 1929.

It will be remembered that under that section every charge to which the section applies, created by a company, is, so far as any security on the company's property or undertaking is concerned, rendered void against the liquidator and any creditor, unless the prescribed particulars of the charge,

together with the instrument creating the charge, are delivered to the registrar of companies for registration. The charges to which the section applies include "A charge on land wherever situate or any interest therein."

Now, I thought at first that where a company was registered with an absolute title under the L.R.A., there could be no need to search the Companies' Register at Somerset House, but on looking up the sections in that Act, in which I expected to find authority for that view, it does not seem to be so clearly stated as I thought.

The section to which I naturally turned, in the first place, is s. 60, which reads :—

"(1) Where a company, registered under the Companies (Consolidation) Act, 1908, is registered as proprietor of any estate or charge already registered the registrar shall not be concerned with any mortgage, charge, debenture, debenture stock, trust deed for securing the same, or other incumbrance created or issued by the company, whether or not registered under that Act, unless the same is registered or protected by caution or otherwise under this Act.

"(2) No indemnity shall be payable under this Act by reason of a purchaser acquiring any interest under a registered disposition from the company free from any such incumbrance."

That section was introduced by the L.P.A., 1924, Sched. VIII, para. 11. I should think that it was intended to cover every case where a company is registered as a proprietor, but, on reading it carefully, it certainly appears to apply only where a company has acquired and become registered as the proprietor of land already registered and not to land of which the company is registered as the first proprietor. There may be some reason for that distinction, and perhaps the construction which I put upon it is unduly restrictive of its operation. But that is how it strikes me.

Turning to the other sections which come under the heading "Protection of Various Interests," the first is s. 59. Sub-section (1) deals with writs, orders, deeds of arrangement pending actions and other interests which may be protected by registration under the L.C.A., 1925. Sub-section (2) refers to land charges and reads :—

"(2) Registration of a land charge (other than a local land charge) shall, where the land affected is registered, be effected only by registering under this Act a notice or caution or other prescribed entry :

"Provided that before a land charge (being a charge to secure money) is realised, it shall be registered and take effect as a registered charge under this Act in the prescribed manner without prejudice to the priority conferred by the land charge."

We may pass over sub-ss. (3) and (4). Then the next sub-section provides :—

"The foregoing provisions of this section shall apply only to writs, orders, deeds of arrangement pending actions and land charges which if the land were unregistered would for the purpose of protection be required to be registered or re-registered after the commencement of this Act under the L.C.A., 1925 . . ."

Sub-section (6) is not important for our purpose. Sub-section (7) reads :—

"(7) In this section references to registration under the L.C.A., 1925, apply to any registration made under any other statute which, in the case of unregistered land, is by the L.C.A., 1925, to have effect as if the registration had been made under that Act."

Now, by s. 10 (5) of the L.C.A., 1925, it is enacted that in the case of a land charge for securing money created by a company registration under s. 93 of the Companies (Consolidation) Act, 1908 (now s. 79 of the Companies Act, 1929), shall be sufficient in place of registration under the L.C.A.

We must then read sub-s. (5) of s. 59 above quoted as providing that the section applies to (*inter alia*) land charges which would, if the land were unregistered, require to be registered under s. 79 of the Companies Act, 1929. Consequently it would appear that under sub-s. (2) such a land charge affecting registered land can only be effectual if a notice, caution or other prescribed entry be placed upon the register.

It seems a roundabout way of arriving at it ; but if s. 60 is limited in its scope as has been suggested, s. 59 seems to be the effective provision which frees a purchaser of land of which a company is registered as a proprietor from searching the register at Somerset House, whether the company is the first proprietor or not.

**Lessees having Notice of their Lessor's Title.**

The editor has passed on to me a copy of a most interesting letter from Mr. W. Y. Heyling, a Solicitor of the Supreme Court of New Zealand, in which he refers to my diary for the 3rd of October on this subject. The writer traverses the views which I expre sed. I have no space to deal with the letter this week, but thought it right to mention it and say that I appreciate the arguments which Mr. Heyling puts so well, and will take an early opportunity of considering them fully.

## Landlord and Tenant Notebook.

**Removal of Fixtures by Third Parties.**

When the common law first recognised exceptions to the "*Quid quid solo plantatur*" rule, it was a matter of indifference to landlords and tenants themselves whether the theory was that a fixture belonging to one of the three classes was realty capable of resuming the character of personalty, or a chattel which, if left unsevered, would acquire the nature of freehold. Before such institutions as debentures, bills of sale and hire-purchase agreements had been evolved, the question whether a tenant who sold and delivered a trade, domestic or agricultural fixture altered its legal status would trouble nobody. And it could not be distrained, because, *ex hypothesi*, it could not be returned in the same plight : *Darby* v. *Harris* (1841), 1 Q.B. 895. Only a covenant to deliver up might make the question a practical one ; and it was anxiety on this score which led to the action against a sheriff in *Poole's Case* (1703), 1 Salk. 368, in which the plaintiff, a mesne tenant, complained of execution levied on the plant installed by the sub-tenant, a soap-boiler ; believing, rightly or wrongly, that the removal would expose him to an attack from the superior landlord. Lord Holt's exposition of the law, to the effect that "after the term" the fixture "became a gift in law to the reversioner," has been consistently followed and applied ever since.

The relaxation of the rule in the case of uncertain tenancies by permitting removal within a reasonable time has lost its importance since L.P.A., s. 149 (6), extended the term of a lease for a life or lives ; but its full force is to be seen in the decision in *Leschallas* v. *Woolf* [1908] 1 Ch. 141, in which it was held that the gift will be bestowed by a surrender, even if the surrender be made with a view to the grant of a new lease to the same tenant, to commence at once. The case is also an authority for the proposition that a mesne tenant who agrees to surrender thereby undertakes to deliver up tenant's fixtures brought in by his sub-tenant ; but the latter will be entitled to remove them during his term, though this will render the mesne tenant liable to the surrenderee. But the decision has not affected the validity of a number of authorities as to the possible rights of others who may have acquired interests in tenant's fixtures. These authorities follow a passage in Co. Lit. : "having regard to strangers who were not parties or privies [to the surrender], the estate hath in consideration of law a continuance", and the principle that a grantor may not derogate from his grant.

In *London and Westminster Loan and Discount Co. Ltd.* v. *Drake* (1859), 7 W.R. 611, a tenant had granted the plaintiffs a bill of sale over furniture and removable domestic fittings; when default was made next year, the plaintiffs sent their broker to take possession. Next, the tenant executed a formal surrender, and the landlord let the house to the defendant, who in this action disputed the plaintiffs' right to the fixtures. It was held that the surrender to which they had been neither party nor privy had not prejudiced their right to sever. It was also held that, while trover or detinue could not lie in the case of unsevered fixtures, a special action for preventing severance was applicable.

This decision was approved in *Saint* v. *Pilley* (1875), 33 L.T. 93, in which tenant's fixtures had been sold by a trustee in bankruptcy. The trustee gave the purchaser notice to remove them, but as his brother was negotiating for a lease he did not comply. The trustee then, without informing the purchaser, surrendered the old lease; the surrender was held not to affect the rights of the purchaser.

But the third party is bound to remove his property within a reasonable time if he wishes to avoid a gift being made to the reversioner, and it was partly on this ground that the claim by the purchaser of a greenhouse was defeated in *Moss* v. *James* (1878), 38 L.T. 595, C.A. The defendant's tenant had assigned the greenhouse by a bill of sale during the tenancy; the assignee had taken possession; the tenant, getting into further difficulties, had handed the keys of the property over to the defendant (effecting, as was held, a surrender in law); notice was given to the assignee, but not till three or four weeks later did he succeed in selling the greenhouse to the plaintiff. The delay was considered unreasonable, and the plaintiff could not, of course, be put in any better position than the vendor.

A hire-purchase agreement, of the type now familiar, figured in *Cumberland Union Banking Co.* v. *Maryport Hematite Iron & Steel Co.* [1892] 1 Ch. 415. A mortgage granted by mining tenants to their bankers expressly included trade fixtures, present and future. An engine was then installed, to be paid for on the hire-purchase system. Long before the purchase stage was reached, the bank appointed a receiver and the tenant company went into liquidation. On the principle laid down in *Poole's Case, supra*, it was held that the engine was still a chattel, and as the property was in the suppliers, the mortgage could not pass it to the bank. A passage in the judgment to the effect that if it were allowed to remain after the end of the term it would pass to the freeholder, is a *dictum* not to be relied upon.

The possible effect of forfeiture was considered in *Re Glasdir Copper Works Ltd.* [1904] 1 Ch. 819, when a question arose between the receiver appointed by debenture-holders and the landlord. The company had gone into liquidation, which was a cause of forfeiture under the lease, and the lessors' solicitor wrote demanding possession soon after a sale of the effects, including trade fixtures, had been advertised by the receiver. A motion to restrain the sale was now made, and the court following *Saint* v. *Pilley, supra*, and *London and Westminster Loan, etc., Co.* v. *Drake, supra*, held that the receiver might remove the effects within a reasonable time.

### FORD TRUST AWARD.

We have been notified by the hon. secretary of the Hampshire Law Society, that the trustees of the Ford Trust, whereby the sum of £500 was devised by the late Charles Ford, solicitor, Outer Temple, Strand, the yearly income of which was to be awarded in each year to the articled clerk who, having been articled in Hampshire, should, in the opinion of the trustees on the result of the Solicitors' Final Examination in that year be the most worthy of the clerks who have been so articled, has been awarded for this year to Mr. Phillip Canter, who was articled to Mr. V. C. Lisby, solicitor, of the firm of Messrs. Ensor, Lisby & Firth, of Portland-street, Southampton.

## Our County Court Letter.

### WIFE'S EARNINGS AS SEPARATE ESTATE.

In *Griffiths* v. *Griffiths*, recently heard at Bridgend County Court, the applicant claimed a declaration that he was entitled to (1) a sum of £677 which was on deposit account in his wife's name at Lloyds Bank; (2) a house valued (with the furniture) at £1,100, the assignment having been taken in their joint names. The parties had been married in 1903 (when neither of them had any property), and the applicant had obtained work as a miner while the respondent took lodgers. The applicant was illiterate, and their joint affairs were managed by the respondent, who (in 1909) induced the applicant to sign, in the presence of a solicitor, the following undertaking: "I hereby declare and promise to hand over all my money every Friday to my wife and also to abstain from intoxicating liquor." The applicant's case was that, although he had observed the above conditions (in return for an allowance of 1s. a week), he had recently been excluded from the house by the respondent without cause. Corroborative evidence as to his sobriety was given by a mutual friend of the parties, but the respondent contended that (*a*) she had never been given sufficient to maintain the home, as the applicant (having always concealed the amount of his earnings) had only allowed her small sums, (*b*) she had therefore kept seven lodgers for twenty years and (as the above property represented her own earnings) she was entitled to retain it as her separate estate. It was argued for the applicant, that a surviving privilege of a husband was that he was not only entitled to savings from household allowances, but also to any profits from the letting of lodgings by the wife. His Honour Judge Rowland Rowlands held that the respondent had acted as trustee for herself and her husband, as shown by the fact of the house having been assigned to them jointly, and an order was therefore made for the division of the money and property between the parties in equal shares.

It is to be noted that the Married Women's Property Act, 1882, s. 17, provides that a husband or wife (or any bank or society in whose books the property in dispute is standing) may apply to any judge of the High Court or (at the option of the applicant, *irrespectively of the value of the property in dispute*) to the judge of the county court of the district, who may make such order with respect to the property in dispute as he thinks fit.

The above subject was considered in *Birkett* v. *Birkett* (1908) 24 T.L.R. 284, in which the husband claimed a declaration that £135 in the Post Office Savings Bank was his property. The applicant was employed as an engine-driver in South Africa for four years (during which period he sent his wife £2 15s. a week), but differences arose on his return, and the parties separated. The applicant's case was that he had arranged to support his wife and their two children, and that the surplus (if any) should be invested in his name. The respondent contended, however, that the remittances were unconditional, and the county court judge at Whitehaven (having accepted her evidence) held that the total of the unspent weekly balances was a gift to the wife. In the Divisional Court it was conceded (on behalf of the wife) that, if the parties had been living together, the money would have been the husband's, and the appeal was allowed on the ground of misdirection. Mr. Justice Phillimore (as he then was) pointed out that the husband was only away temporarily as the bread-winner, and any savings from the household expenditure were to be kept—as if his absence had been for a week only. There was no intention that the parties should live continuously apart, and (as there was no evidence that the amount included any earnings of the wife) the applicant was entitled to an order, in which Mr. Justice Walton concurred.

The last-named case was distinguished from *Brooke* v. *Brooke* (1858) 25 Beav. 342, in which the wife (for no apparent reason) left her husband, who returned to India, but continued

to send her money for thirty-four years. It was held that the length of separation showed that the money was sent in such a way as to become part of her separate estate.

It had previously been held in *Barrack* v. *M'Cullock* (1856) 3 K. & J. 110, that money received by a wife from the proceeds of her husband's business, and invested in her own name, is nevertheless the property of the husband. The point as to whose business is being carried on, when the wife lets lodgings in the matrimonial home, appears to have been uncovered by authority prior to the first-named case, *supra*. Compare the "County Court Letter" entitled "Wives' Claims to Husbands' Assets" which appeared in our issue of the 9th May, 1931 (75 Sol. J. 305).

## Correspondence.

### Appointment of New Trustees for Purposes of the Statutory Trusts.

Sir,—If your learned contributor is right, will a person nominated by a will to appoint new trustees be able to appoint new trustees for these purposes? I assume not, unless the L.P.A. "creates a settlement." See s. 205 (1) (viii). Cannot the point discussed be looked at from a different angle where the trustees of a will are holding upon these trusts? It is the trustees of the will who are so holding, and these, it is suggested, are the trustees for the time being. If a new trustee of the will *simpliciter* is appointed (without reference to any trusts) should not that be sufficient?

Cannon-street, E.C.4. F. R. Bergh.
19th October.

Sir,—Apropos of Mr. Clements' interesting argument under "A Conveyancer's Diary" as to the effect of the appointment of new trustees of a will whereby the transitory provi ions trustees had become trustees for sale upon the statutory trusts, I should like to hear his opinion on the following questions:—

(1) Assuming in such a case an appointment to be expressed to be made of a new trustee of the will, would not the court hold it valid on the principle of aiding a defective execution of a power when the intention was apparent?

(2) Suppose under a pre-1925 trust trustees held land upon trust for infants in equal shares, and a power was given to them by the trust instrument to sell the land and invest the proceeds in certain specified investments, and that after 1925 the trustees sold the land under the statutory trusts, the beneficiaries still being infants. Would it be permissible for the trustees to invest the proceeds in any investment authorised by the will?

Norwich, Watson & Everitt.
19th October,.

### The Repair of Stiles and Footways.

Sir,—Your interesting article on stiles and footpaths leads one to recall the origin of these convenient modes of intercommunication. It is more than probable, indeed almost indisputable, that the right of way existed before the stile, and even in most cases before the fence. The stile presumably was erected by the landowner under compulsion to preserve the right of way, to protect his cattle from straying. Following the various awards under the Enclosure Acts, allotments of common land were fenced and stiles erected where the footpaths over which there was a right of way crossed the close. It is a nice point whether the landowner had a right to place a quasi-obstacle in the path of the user of a footpath, but possibly the Acts dealt with the question. At any rate, it is clear that at the time the landowner was liable for the maintenance of the stile. The judgment of thecounty court judge in *Rundle* v. *Hearle* would appear to be correct, and possibly the point was not taken on appeal that originally the stile was erected not for the benefit of the public but for the benefit of the landowner and his tenant. The case of a footpath subject to a right of way and its repair is doubtless on a different footing. If the public acquire by prescription a right to use a footpath across arable land, the public cannot claim that the landowner should keep the path in condition other than as a path across a field of arable land. In the case of a bridle path it was necessary for the landowner to provide a gate sufficiently wide for a horseman to pass mounted, and it would be interesting to learn on whom the duty fell to close the gate.

Your further comments would be appreciated.

Birmingham. F. G. H.
17th October.

### Mortgages and Sterling.

Sir,—I have read with much interest the article by Mr. A. J. Fellows in your issue of the 17th October. May I briefly deal with some of the points he raises.

1. There is no probability of mortgagors being willing to agree to repay principal or pay interest on any basis other than that of sterling. Investors subscribing for or purchasing other fixed interest securities have to run the risks of sterling and there is no reason why mortgagees should be specially favoured.

2. On the other hand mortgages have the advantage of ranking from the investment standpoint as redeemable securities. If owing to depreciation in sterling the rate of interest rises mortgagees can require increased interest or recall their money. Purchasers of long-dated fixed interest securities have not these valuable rights. Trustees should therefore invest part of their funds in short-dated redeemable securities or in mortgages.

3. Any inflation in currency no doubt causes all "securities" to depreciate and "commodities" and "things" to appreciate accordingly. I submit, however, that the best "hedge" for trustees fearing such chaos is the purchase of suitable real property or the purchase of ordinary shares of good-class property-owning companies if such modes of investment are authorised. I think, however, that chaotic depreciation of sterling need not be apprehended in England for many reasons, one being that in view of our dependence on foreign food, the consequent rise in the cost of living would wreck any government whose policy brought such conditions to pass.

4. I agree that owners should be chary of granting long leases on the basis of present rental values. A way of meeting lessees might be to grant them an option of renewal at the fixed rent or (at the lessors' option) a rent increased proportionately to any increase in the Board of Trade cost of living figures.

Liverpool. J. L. W.
20th October.

## Books Received.

*Mews' Digest of English Case Law.* Quarterly Issue. October, 1931 (cases reported from 1st January to 1st October). London: Sweet & Maxwell Limited; Stevens & Sons Limited.

*Lord Cave.* A Memoir. By Sir Charles Mallett, author of "A History of The University of Oxford," with an Introductory Chapter by Countess Cave, of Richmond. 1931. Demy 8vo. pp. x and (with Index) 333. London: John Murray. 15s. net.

# POINTS IN PRACTICE.

**Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to The Assistant Editor, 29, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.**

**Purchase by Administrator** WITH THE WILL ANNEXED OF THE DECEASED'S LEASEHOLDS—PROCEDURE.

*Q.* 2318. The deceased died in 1927, but no executors were appointed by his will. Administration with the will annexed was granted to one of the deceased's sons. The deceased left nine children, all of age. It has now been agreed that the administrator with the will annexed should purchase the deceased's leasehold cottage at the price of £260. (This was the figure given and agreed at with the district valuer in the Inland Revenue affidavit.) The deceased's estate was sworn at under £500, but the other assets are practically unsaleable. Your opinion is desired to ascertain how the proposed sale should take effect.

*A.* While there is an absolute rule that a trustee with a trust for or power of sale, cannot, except under an order of court or an express authority in his trust instrument, purchase the trust property, yet he may buy the interests of the beneficiaries if a fair price is given, full disclosure made by the trustee of all material facts in his knowledge, and the beneficiaries are separately represented. Acting on this principle the administrator could buy up the whole of the equitable interests and then call for an assurance from himself of the legal estate as being absolutely entitled in equity.

**Gift to Grandchildren** *per capita*—ASCERTAINMENT OF CLASS.

*Q.* 2319. A testatrix made her will in the year 1861, whereby her real estate was devised to her trustees upon trust to receive the rents thereof and after payment of expenses, to pay the net amount unto and equally between and among all her four daughters, share and share alike, during their joint natural lives and the lives and life of the survivors and survivor of them, and after the death of the last survivor, of all her daughters, any one or more of them having left lawful issue, upon trust to sell all the said real estate and pay and divide the net proceeds unto and equally between and among all the children of testatrix's four daughters *per capita* and not *per stirpes*, as and when they attained twenty-one years. The testatrix died in 1880, and her will was proved in 1894. The last surviving daughter died in 1930. Three of the daughters have left children. Several of the children of the daughters died before the death of the last surviving daughter and one has died since. The deceased children left issue surviving them. In the distribution of the net proceeds of sale, does each of the children of the daughters take an equal share, notwithstanding the death of some of them. What share does the issue of children who have died prior to the time of distribution take? The trustees are proposing to pay the net proceeds to the children of the testatrix's daughters who were alive at the death of the last surviving daughter only. Is this procedure correct? Can the trustees ignore the issue of the deceased children?

*A.* We extract the following from p. 421 of "Tudor's Leading Cases on Real Property Conveyancing, etc." 4th ed.—

"Another rule mentioned in the principal case (*Viner* v. *Francis*, 2 Cox. 190) is, that where a prior life interest is given to a person, followed by a gift over to his children, or the children of another person, then, as the period for distribution would be at the death of the person taking the prior interest, that would also be the period for ascertaining the class of children, which would comprehend all those born previous to the death of the person having the prior interest, and the representatives of such of those children who died during the life of such person, to the exclusion of children and the representatives of children born afterwards, or who predeceased the testator."

Our subscriber is referred to this passage and to the numerous cases quoted in support thereof. If the rule is applied to the facts in the present question, and on the assumption that there is nothing else in the will directly or indirectly bearing on the point at issue, it would appear that the parties to share are the children of the testatrix's daughters who were alive at the death of the last surviving daughter and the personal representatives of any such children who predeceased such last surviving daughter having attained the age of twenty-one. The issue of deceased children of the four daughters are not concerned except in so far as they may take under the wills or in the intestacies of their parents. We have assumed for the purposes of this reply, that all the living grandchildren of the testatrix had attained twenty-one before the death of the last surviving daughter in 1930.

**Land Settled by Will, pre-1925**—WILL NOT PROVED IN TENANT FOR LIFE'S LIFETIME.

*Q.* 2320. A died in 1903, having made a will appointing two executors and trustees (both of whom are dead) and devised to them her real estate, upon trust for her daughter, B, for life, and on her death directed them to sell and divide the proceeds. The will of A has not been proved. On the 1st January, 1926, the legal estate vested in B as estate owner and she has lately died intestate. It is proposed to take a grant of letters of administration to the estate of B, including, of course, the settled land. There is a mortgage on the property created by A. The question arises whether it will first be requisite to obtain a grant of representation (with the will annexed) to the estate of A. It is considered that this is not now necessary. The testatrix left no estate beyond the property and some furniture. Even if the will had been proved, the legal estate on 1st January, 1926, would have vested in B as estate owner, but the probate authorities, who will require production of the will creating the settlement before issuing the grant to B's estate, may insist on this being done. When the grant to B's estate is obtained, will the administrator be in a position to make a title to a purchaser? As stated above, the executors and trustees of A's will are both dead and there are no persons to whom an assent could be made on trust for sale under A's will.

*A.* In answer to *Q.* 2243, SOLICITORS' JOURNAL, 18th July, the opinion was expressed that in such a case the legal estate was not vested in the tenant for life. Whether this view is correct or not, the arguments in favour of it are considered to be sufficiently strong to necessitate the proof of A's will in order that a title which could be forced on a purchaser can be made. In any case, if the legal estate was in B, it is the duty of her administrator, unless he has occasion to sell the land in due course of administration, to vest it by assent in the trustees of the settlement, and these will be the administrators (with the will annexed) of A's estate when appointed (see *Re Cudney's Will Trusts* [1931] 1 Ch. 305). It is not, however, known why the probate authorities should insist on the production of the settlement on taking out administration to B's estate.

## In Lighter Vein.

THE WEEK'S ANNIVERSARY.

When Sir William Thomson died on the 27th October, 1739, he had been Recorder of London for twenty-five years and a Baron of the Exchequer for ten. Few men would have dared to cling so tenaciously to the lesser office, whose duties he performed by deputy, after promotion to the bench of one of the superior courts, but Thomson was both grasping and cantankerous. While at the Bar he had lost the post of Solicitor-General through a disgraceful quarrel with the Attorney-General. After a difference with his chief over a matter of fees, he accused him, without the slightest foundation, of taking bribes and auctioning charters in his chambers. As a result of the ensuing inquiry, Mr. Attorney was completely vindicated and Mr. Solicitor was discharged with ignominy. He fell, however, without sustaining permanent injury, since, on the rebound, he landed on the bench.

TRIAL TRIPS.

"I know, I have been on one," said Mr. Justice McCardie, when counsel recently remarked that a "speed boat" trip is a very exciting experience and that very few people can stand more than a three or four minutes' run. One can hardly believe that this is among the habitual recreations of the learned judge. Any experiment that he may have made was probably prompted by a strong sense of public duty, as in the case of Mr. Justice Day's trial trip on the treadmill at Leeds. He was imprudent enough to mount the instrument of torture in his heavy inverness and was quite ready to be released long before the warder pretended to notice his anxiety to get off. "If it is your custom to carry your duty so far as this," remarked the judge afterwards "I shall have to reduce my sentences." The next number of "Punch" contained a fanciful picture of his lordship on the treadmill in full judicial robes.

NO OFFENCE IN LAW.

No better authority than that of the austere Avory, J., could be desired for the proposition that "it is not yet an offence for a man to come home at 11 p.m."—in the eyes of the law, at any rate. There is, however, a story of a judge of the last century who had married a temperamental French wife and was once imprudent enough to take her with him when he went the Northern Circuit. At York, he dined with the Bar, the festivities lasting till the early hours of the following morning, and as he with some of his convivial companions approached the judge's lodging, a figure in night-cap and night-gown appeared at one of the windows, crying out with a quaint French accent: "Is this a fitting time for one of Her Majesty's judges to be out? Come in!" And in he went. But, for the future, he went on circuit alone.

SLANG'S USES.

Sir Ernest Wilde's remark that sometimes only a slang word expresses what you mean (a witness had spoken of a "dud" business) recalls a strange passage which occurred between Lord Mansfield, C.J., and a witness from the slums of St. Giles-in-the-Fields—where the beggar in "The Beggar's Opera" came from. "My lord," he began, "as I was coming by the corner of the street, I stagged the man." "What is stagging a man?" asked the Chief Justice. "Stagging, my lord, why you see, I was down upon him." "Well, but I don't understand being down upon him any more than stagging him." "Well, an't please your lordship, I speak as well as I can. I was up, you see, to all he knew." "To all he knew! I am as much in the dark as ever." "Well, my lord, seeing as how he was a rum kid, I was one upon his tibby." At this point, the fellow was discharged as being incapable of describing anything. But that it was not quite a case of invincible ignorance of the English language may be gathered from his boast, subsequently overheard, that he had "gloriously queered old Full Bottom."

## Obituary.

MR. P. M. COWARD.

Mr. Peter Bancroft Coward, solicitor, a member of the firm of Oxley & Coward, Rotherham, died recently at Croydon, at the age of seventy-six. Mr. Coward, who was admitted in 1877, was a Past President of the Sheffield Law Society, and Mayor of Rotherham, 1910-11. He was a member of The Law Society.

MR. A. P. DELL.

Mr. Alfred Percival Dell, solicitor, of the firm of Tozer, Dell & Edwards, Teignmouth, died there recently at the age of fifty-nine. Admitted in 1894, he was a member of The Law Society, and an Ex-President of the Devon and Exeter Law Association. He acted for many years as clerk to the Teignmouth Urban District Council and to the Old Age Pensions Committee.

MR. J. M. FLEGG.

Mr. James Minter Flegg, of the firm of Flegg & Son, solicitors, 7 New Square, Lincoln's Inn, W.C., died recently at the age of seventy-three. He was admitted in 1881 and practised for many years in Laurence Pountney Hill, and was formerly a representative of the Ward of Dowgate on the Court of Common Council.

MR. F. RYALL.

Mr. Frederick Ryall, solicitor, passed away recently. He resigned the Town Clerkship of the Metropolitan Borough of Bermondsey in 1927, having held the position for thirty-three years. He was admitted in 1885.

## Notes of Cases.

### House of Lords.

**Rogerson *v.* Scottish Automobile and General Insurance Company, Ltd.**

19th October.

MOTOR CAR—INSURANCE—SALE OF CAR—SUBSTITUTED CAR—LIABILITY TO THIRD PARTY.

This was an appeal from the Court of Appeal reversing the decision of Roche, J. The appellant in the case was Captain J. C. Rogerson, who took out a motor car insurance policy by which the respondent company contracted to indemnify the appellant against all sums which the assured should become legally liable to pay as compensation for bodily injury caused to any person or persons by any motor car described in the schedule thereto, and therein called "the insured car." The policy further provided that the insurance should cover the legal liability of the assured in respect of the use by the assured of any motor car other than a hired car provided that such car was at the time of the accident being used instead of the insured car. During the currency of the policy the appellant bought a new car similar to the insured car except that it was fitted with a saloon body, and he handed over the insured car in part payment for the new car. On 28th July, 1929, while driving the new car the appellant came into collision with another car and became liable to pay damages to the occupant of the other car. The respondents repudiated liability on the ground that the substituted car was not being used instead of the insured car, and the appellant brought this action for a declaration that he was entitled to be indemnified by the respondents. Roche, J., decided in favour of the appellant, but the Court of Appeal held that at the time of the accident he had no interest in the insured car and that the substituted car was not being used instead of the insured car within the meaning of the policy.

THE HOUSE (Lords Buckmaster, Warrington, Russell, and Macmillan) without calling on counsel for the insurance

company, were unanimously of opinion that the policy necessarily implied that the insured car should be the subject of the insurance at the time of the accident. The appellant could not recover under the policy as his claim was not covered by the words "provided that such car is at the time of the accident being used instead of the insured car."

COUNSEL: *Schiller*, K.C., and *N. Fox-Andrews*; *Rayner Goddard*, K.C., and *G. O. Slade*.

SOLICITORS: *William Charles Crocker*; *Stanley Evans and Co.*

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

## Court of Appeal.

### Grist *v.* Grist.

Lord Hanworth, M.R.; Lawrence and Romer, L.JJ.

13th October.

HUSBAND AND WIFE—DIVORCE—PRACTICE—PETITION BY WIFE FOR JUDICIAL SEPARATION—DISAGREEMENT OF JURY — APPLICATION FOR PAYMENT OF WIFE'S COSTS — DISCRETION—JURISDICTION TO MAKE NO ORDER "AT PRESENT."

Appeal from a decision of Bateson, J.

The parties were married in 1898. In 1930 the wife petitioned for judicial separation, but after two days' hearing the jury disagreed. The husband, at the order of the court, had given security for the wife's costs in the sum of £45, but they exceeded that amount, and in July, 1927, she took out a summons for an order that her costs, up to and including the first trial, should be taxed and paid by the husband. Bateson, J., said that he would make no order for the present; the wife appealed. Their lordships dismissed the appeal.

Lord HANWORTH, M.R., said that Bateson, J., had followed the course adopted in *Waudby* v. *Waudby and Bowland*, 17 T.L.R. 490, and had kept open his right to decide as to the proper order to make. Having referred to *Hurley* v. *Hurley* [1891] P. 367; *Robertson* v. *Robertson*, 6 P.D. 119; *Kemp Welch* v. *Kemp Welch* [1910] P. 233; *Courage* v. *Courage*, 47 T.L.R. 395; and *Silver* v. *Silver* [1924] P. 163, his lordship said that although a wife might, generally speaking, be entitled to the costs of an abortive trial, yet it was not necessarily all the costs that she could claim, but only costs which were necessary and reasonably incurred. Taking the ruling in these cases at its full face value, there was nothing which established the proposition that, at a time when the final issue had not yet been determined, when the full facts were not yet known, it was obligatory upon the court to order a wife's costs to be taxed and paid forthwith. Their lordships could not overrule the very wide discretion given to Bateson, J., and say that he was wrong in postponing his decision until a time when he might be in a better position to decide as to the proper order to make.

COUNSEL: *H. G. Garland*, for appellant; *Noel Middleton*, for respondent.

SOLICITORS; *Alfred C. Warwick & Co.*; *Cunliffes, Blake and Mossman*, for *Tolhursts & Cozens*, Southend-on-Sea.

[Reported by G. T. WHITFIELD-HAYES, Esq., Barrister-at-Law.]

## Probate, Divorce and Admiralty Division.

### *Re* M. M. Smith, deceased.

Bateson, J. 20th July.

PROBATE—PRINTED WILL FORM—DISPOSITIONS ON PAGES FOLLOWING PAGE CONTAINING SIGNATURE AND ATTESTATION—WHOLE DOCUMENT ADMITTED TO PROBATE.

This was a motion to admit to probate in solemn form an alleged will of the testatrix who died on 20th March, 1931. The will was made on a printed form, upon the first page of which as folded appeared an appointment of executors and the signatures of the testatrix and the attesting witnesses. The second and third pages, upon which nothing was printed, contained directions as to the disposal of the deceased's estate, which was of the value of about £700. One of the attesting witnesses gave evidence that the testatrix had herself written the contents of the second and third pages before she had executed the will. The executors now moved for a grant of probate of the document, including the second and third pages.

BATESON, J., in acceding to the motion, said that the whole of the document would be admitted to probate. It was clear that the testatrix had written out the disposition of the whole of her property on the second and third pages of the form which was lying flat on the table. Then she had turned the document over and completed the printed portion, at the end of which was her signature duly attested. In *In the goods of Wotton* (1874), L.R. 3 P. & D. 159, Sir James Hannen pointed out how general the words of the Wills Act were. By including the second and third pages, the court would be very nearly doing what was done in *In the Goods of Gilbert* (1898), 78 L.T. Rep. 762.

COUNSEL: *H. B. D. Grazebrook*, for the executors; *Noel Middleton*, for the next of kin.

SOLICITORS: *Maude & Tunnicliffe* for *Halcro & Raine*, Sunderland; *Iliffe, Sweet & Co.*, for *Punch & Robson*, Middlesbrough.

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

# Societies.

## Bristol Incorporated Law Society.

REPORT OF THE COUNCIL.

Pursuant to the Articles of Association the Council presented their annual report at the sixty-first Annual General Meeting of the Society held on Monday, the 12th October last, as follows:—

LEGISLATION.—The Council draw attention to the following Acts of Parliament:—20 & 21 Geo. 5: Land Drainage; Public Works Facilities. 21 & 22 Geo. 5: National Health Insurance (Prolongation of Insurance); Unemployment Insurance (No. 2) and (No. 3); Workmen's Compensation; Widows', Orphans' and Old Age Contributory Pensions; Coal Mines; Finance; Marriage (Prohibited Degrees of Relationship); Road Traffic (Amendment).

The Council also draw attention to the Benefices (Exercise of Rights of Presentation) Measure passed amongst others by the National Assembly of the Church of England and which received the Royal Assent this year.

POOR PERSONS' COMMITTEE.—This Committee during the past year (April, 1930—March, 1931) dealt with fifty applications for legal assistance as compared with thirty-nine during the previous year. Of these twenty-six were granted and twenty-four refused. There are no arrears, all applications granted having been allotted to solicitors to conduct. Eighteen divorce cases have been heard. The Council again desire to thank those solicitors who have undertaken the conduct of these cases, and ask members who have not already done so to allow themselves to be placed on the rota, so that the work may be fairly distributed.

LEGAL EDUCATION—SCHOOL OF LAW.—A grant of £600 has again been received this year from The Law Society by the Bristol and District Board of Legal Studies. Courses of lectures have been given as follows: Twelve for Final Students, three of these being given by Mr. Malcolm M. Lewis, M.A., LL.B. Cantab., Director of Legal Studies, on Conveyancing; three by Mr. A. M. Wilshere, M.A., LL.B., on Common Law; three by Mr. W. W. Veale, LL.D. (Lond.), two on Company Law and one on Company Law and Partnership; and three by Mr. K. H. Bain, LL.B. (Lond.), two on Procedure and Evidence and one on Wills and Intestate Succession. Six courses have been given for Intermediate Students on the Subject-matter of Stephen's Commentaries, three being given by Mr. Lewis and three by Mr. Veale. The total number of Students attending these lectures was forty-two. One attended from Bath, one from Bradford-on-Avon, two from Cheltenham, one from Glastonbury, four from Gloucester, one from Sherborne, one from Stroud, six from Taunton, one from Trowbridge, two from Wedmore, and two from Weston-super-Mare. The remaining twenty were local students.

During the year twenty articled clerks passed the examinations of The Law Society, of whom twelve passed the Final Examination, one the Intermediate, and seven the Intermediate (Book-keeping portion only).

A prize in books to the value of £10 10s. has been awarded to Mr. R. H. Kersley, B.A., LL.B., Cantab., articled to Mr. W. J. Taylor, who obtained a first class at the Honours examination held in June last, and prizes in books to the value of £3 3s. have been awarded to Mr. T. J. M. Barrington, LL.B. (Lond.), articled to Mr. T. W. Williams, B.A., Mr. W. G. Hiatt, LL.B. (Lond.), articled to Mr. H. C. P. Day, and Mr. D. T. Hicks, articled to Mr. W. C. H. Cross, LL.B., who obtained third class honours at the examination held in November last, and a similar prize to Mr. H. J. H. Alpass, articled to Mr. G. C. Rallison, who obtained third class honours at the examination held in March last.

The Law Society's Visit.—Members will remember that on 12th March last an intimation was sent to them that it was proposed to invite The Law Society to hold its meeting of 1932 in Bristol on the occasion of Mr. Barry's Presidency, and that they were asked for their support and invited to express their views. All the replies were unanimous in approving the proposal, and accordingly an invitation was sent to The Law Society and was accepted. It is now proposed that at the annual meeting a reception committee shall be appointed, and one of the first duties of that committee will be to ask for generous promises of financial support, in order to make the 1932 meeting as successful as were those of 1894 and 1910. The Council have been greatly pleased to learn that the Lord Mayor, who will welcome the guests, is a practising solicitor and an ex-President of this Society, Mr. John H. Inskip.

The Council regret to have to report the deaths of Mr. E. J. T. Broad, Mr. A. M. Styring and Mr. E. H. H. Salmon.

The Council beg to acknowledge with thanks the presentation of the following books to the Library: Bristol Charters, 1155–1373 (by N. Dermott Harding, B.A.); Bristol Record Society's Publications, Vol. I (Cyril Meade-King, Esq.); Redgrave's Factory Acts, 14th ed. (Joseph Owner, Esq.); Stubbs' Directory, 1931 (Stubbs' Directories, Ltd.).

The members of the Council retiring by rotation are Mr. C. F. L. Clarke, Mr. J. E. Salter and Mr. A. W. Taylor. The Council nominate Mr. C. F. L. Clarke for re-election in exercise of their power under the fourth article of association.

The report was signed by Mr. Cyril-Meade-King, the President, and by Messrs. S. J. Bayliss and J. R. Ware, the Honorary Secretaries.

The report having been adopted the meeting then proceeded to other business. Mr. H. R. Wansborough was elected President, and Messrs. Frank Richardson and G. F. Eberle as Vice-Presidents. It was reported that The Law Society had accepted the invitation to hold their provincial meeting in Bristol next autumn and a Reception Committee was then appointed to make all the necessary arrangements. The Vice-President of The Law Society is Mr. C. C. Barry, a solicitor practising in Bristol, and as he will in all probability be elected President of The Law Society next year, it is interesting to note that it is also probable that the Lord Mayor of Bristol on the occasion of The Law Society's visit will be Mr. John Inskip, another solicitor practising in Bristol.

## Solicitors' Benevolent Association.

The monthly meeting of the directors was held at 61, Carey-street, London, on the 21st October, Mr. Ernest F. Dent in the chair. The other directors present were: Sir Reginald W. Poole and Messrs. E. E. Bird, A. C. Borlase (Brighton), P. D. Botterell, C.B.E., E. R. Cook, C.B.E., T. G. Cowan, A. G. Gibson, C. G. May, H. W. Michelmore (Exeter), E. C. Ouvry and A. B. Urmston (Maidstone); £1,626 was granted in relief, twenty-two new members were admitted. Mr. Horace D. Bright (Nottingham) was elected a director, and other general business transacted.

## Law Students' Debating Society.

At a meeting of this Society held at The Law Society's Hall, on Tuesday, 13th October (Chairman, Mr. John Buckley), the subject for debate was "That the case of *In re Cockell: Jackson* v. *A.-G.* [1931] 1 Ch. 389, was wrongly decided." Mr. C. D. Griffiths opened in the affirmative. Mr. P. H. North Lewis opened in the negative. Mr. A. L. Philips seconded in the affirmative. Mr. C. F. S. Spurrell seconded in the negative. The following members also spoke: Messrs. W. M. Pleadwell, A. L. F. Archer, J. M. Jessup, R. L. Mitchell, J. C. Christian-Edwards, and R. S. W. Pollard. The opener having replied, and the Chairman having summed up, the motion was put to the meeting and lost by ten votes.

# The Law Society at Folkestone.

ANNUAL PROVINCIAL MEETING.

(*Continued from p.* 713.)

On the resumption of the proceedings on Wednesday, the 7th October, the following papers were read:—

COURTS OF DOMESTIC RELATIONS.

By CARRIE MORRISON, M.A. (London).

It is with much trepidation that I venture to read a paper at a meeting such as this, all the more so in that unfortunately I have not had an opportunity of studying at first hand courts of domestic relations in the countries in which they exist.

I am very glad, however, to be able to submit for your consideration a reform which, in my opinion, is of the greatest urgency.

It has fallen to my lot during the last few years to have a good deal to do with cases of domestic infelicity. It may be that it is brought home more forcibly to a woman than to a man, that the present state of matrimonial law and practice is appalling and in urgent need of remedy, but I feel sure that there is no one here who, if he is in general practice, has not at one time or another been amazed.

Especially is this the case with the so-called working and middle classes. Those members of the community who have the means to pay for expert legal and medical advice—I include medical advisedly—and who can afford to apply to the Divorce and Chancery Divisions of the High Court, can obtain a measure of assistance in their domestic troubles, be they between husband and wife or in regard to children.

It is chiefly for those people who cannot afford to pay for such assistance that a court of domestic relations—or family court—call it what you will (domestic relations is not a good name), might prove to be a solution of the present difficulties, and in the sphere of its activities I would include bastardy cases, and adoption and guardianship of infants.

I am fully aware that the present is not a time for advocating further public expenditure, when economy and retrenchment is advocated on all sides, but there is every probability that in a very short time the establishment of family courts would prove to be an economical measure and effect a saving of expenditure in other directions, by the improvement it effected in the upbringing of future generations. It might also pay for itself.

At the present time practically the only place open to people of small means for help in their differences and quarrels is the police or petty sessional court.

It is not for me to blame or criticise, but the evils of this position must be obvious to anyone who considers it.

In the first place, the police court is a criminal court, and all domestic troubles are *not* criminal; moreover the atmosphere of a criminal court is not a suitable one in which to adjust family differences.

Is it appropriate, to say the least of it, that a sensitive wife or a shy unmarried girl with a baby should have to confide, in the first instance, in a burly constable stationed at the door of the court and only be admitted to see the magistrate at his discretion, and that an *apparently* recalcitrant husband on the hearing of the summons, should have to stand just below the dock, in the same place as persons summoned on criminal charges, when the wife who has issued the summons is perhaps more at fault than he is?

Most of the parties to these cases cannot afford to be represented, and how is anyone to ascertain the causes of dissension and the true facts with a garrulous wife in the box and a tongue-tied husband below the dock, or *vice versa*?

Secondly, in spite of the time and trouble and care devoted by magistrates and probation officers or court missionaries to these cases, it is humanly impossible for them to give the time necessary in some cases to arrive at the facts and causes of the trouble, deal fairly with the case, and give the right decision.

There are many cases in which the order is unfair to the wife, but there are probably more cases of husbands smarting under the injustice of unfair orders made against then.

In various other countries some kind of organisation or court has been established to deal with this problem, among others Germany, Holland, and I believe now in Russia, so far as Europe is concerned. In some of the States and cities of Canada and the United States, courts of domestic relations have existed for a number of years and have proved a great success.

In Canada and the United States it was chiefly interest in the future of the child delinquent which led to their establishment. It was found very difficult to deal adequately with child offenders, without dealing with the family. In America, where of course the problem on account of the mixture of races is slightly different, about 80 per cent. of the offences of

children could be ascribed on investigation to the circumstances of their home, and therefore it has been found a great advantage to deal with the family as the unit.

In parenthesis, this is the case here too, and child delinquents are accordingly, as a rule, taken away from their homes.

The jurisdiction of the courts varies in different States. Some have jurisdiction in divorce, some not, but I think I am right in saying they are all linked with the juvenile courts, and have jurisdiction in cases of maintenance and desertion.

The court is presided over by a judge, chosen not so much for his expert legal knowledge as for his tact and common sense, and general ability to deal with the delicate situations which arise in a family dispute.

Probation officers and investigators are attached to the court, and to some courts there are now attached a doctor, a nurse, and what the Americans call a psychopathic laboratory. It has been found that unhappy homes are caused by illness or disease, mental or physical, in more cases than would be anticipated.

The procedure is informal and strict rules of evidence are not adhered to. The following is an example of a typical case :—

The applicant, say a woman complaining of desertion, is shown into a pleasant waiting-room to await her turn for an interview. She is then seen by an expert woman secretary who takes down all particulars of the case, and writes to the husband to call. (This is of course very much the procedure adopted by our court missionaries, but there is at present no pleasant waiting-room in the courts, and the court missionaries have no time to make wide investigations.)

If the husband calls, his side of the story is also taken down impartially, and then both the parties are heard together. In many cases a reconciliation has been effected.

If the husband does not call, or if a reconciliation cannot be effected, the case has to go before the judge, but before it comes to him, the home is visited by an investigator, and a thorough investigation is made including a medical examination.

With all this information before him, the judge is able to deal with the case adequately and make a suitable order. Moreover, the cases are sifted, and the judge is not burdened with cases where a reconciliation is possible.

I have not come across any expression of feeling on the husband's side in America, and in all the reports on work done there the husband is regarded as the delinquent, whereas in my personal experience in England, the husband is sometimes the one to suffer the greater hardship in cases of matrimonial trouble.

An effort to introduce a Bill to establish courts of domestic relations in England has already been made, but so far it has been crowded out by pressure of Parliamentary business. In my opinion, however, the Bill in question is not nearly far-reaching enough. Briefly summarised, it contains the following provisions only :—

(1) Matrimonial cases to be heard in a separate building or separate session of the court.
(2) Cases to be heard *in camera*.
(3) Probation officers to be attached.
(4) Payments to be made into court.

I am informed that it is proposed to draft a new Bill and that Mrs. Mary Hamilton has it in charge, and is at present in the United States and Canada investigating the working of courts of domestic relations, or hopes to go there shortly.

Not being a Parliamentary draughtsman I do not feel competent to incorporate here the exact draft of a Bill to be presented to Parliament, but briefly the constitution, powers and procedure of the courts which I visualise are as follows :—

(1) There shall be established courts of domestic relations which shall be called "Family Courts." (I like this name better, it sounds more Anglo-Saxon.)

(2) The court shall be held in a building set apart for the purpose, which shall contain an informal court room, a waiting-room comfortably furnished, and the necessary offices and rooms for interviews.

(3) The court shall sit as often as occasion shall require, but the offices shall be open most days from 10 a.m. to 4 p.m., and on one day a week from 7 p.m. to 10 p.m.

(4) In the Metropolitan area and in large industrial towns, the department of the probation officers or investigators hereinafter mentioned shall be open for interviews generally every day between 10 a.m. and 10 p.m.

(5) The officers of the court shall consist of a president (who would take the place of judge or arbitrator) and such number of investigators or probation officers as the work of the court shall require; no investigators or probation officers shall be required to deal with more than fifty cases at a time. There shall also be attached a medical officer and/or mental doctor and a nurse. Except in such courts where the amount of cases renders it necessary, the posts of medical officer, mental doctor and nurse shall not be full-time appointments.

(6) The court shall have a staff of clerks and typists to deal with the receipt and payment of money and the usual clerical work.

(7) The president shall be a barrister or solicitor with not less than five years' experience of work in one of the courts at present dealing with matrimonial and other family questions, and after the courts have been established ten years, shall be a solicitor or barrister or a probation officer with not less than five years' experience of work in the Family Courts.

(8) The jurisdiction of the court should extend to all the cases at present dealt with under the Married Women's Summary Jurisdiction Acts, the Bastardy Acts, the Adoption Act and the Guardianship of Infants Acts, and it shall have the powers granted by those Acts to the courts at present having jurisdiction, including the power to order payment of costs. The Family Court shall also have power to try questions arising under the Married Women's Property Acts in cases not exceeding £100.

(9) The Married Women's Summary Jurisdiction Acts and Bastardy Acts shall be amended so as to add the following provisions (*inter alia*) :—

(*a*) All payments ordered to be made shall be paid into court.

(*b*) Equal rights shall be given to men, that is to say, a man shall be able to obtain a summons against his wife if she deserts him, or neglects his home, or otherwise does not perform her part of the marriage relationship.

(*c*) A wife shall not be entitled to maintenance if, in the opinion of the court, she is neglecting her home, refusing reasonable intercourse, or otherwise not carrying out her part of the marriage relationship.

(*d*) The court shall have power to grant injunctions against wives or husbands who molest each other when ordered by the court not to do so.

(10) The court shall sit *in camera* and it shall be within the discretion of the President to allow great latitude in the rules of evidence.

(11) No case shall be tried until an investigator has inspected the home and environment of the parties and reported thereon.

(12) In trying the case the President shall have before him the investigator's report and a medical report, if the parties were willing to submit to a medical examination. If they were not, he shall have power to order a medical examination.

(13) The probation officers or investigators shall interview the parties in private, and shall be competent to advise applicants not only on questions arising after marriage, but also before marriage, from the legal, psychological and medical aspect.

(14) There shall be reasonable fees, but the court shall have wide powers of remission of payment of same.

(15) Appeal from the decision of the Family Court shall be to a Divisional Court of the Divorce Division of the High Court.

(16) The Family Court shall work in close association and co-operation with the juvenile courts, with housing committees and associations, and with the numerous organisations which exist for helping men, women and children.

My idea of the Family Court is that it should be essentially a friendly court, while having the necessary powers to enforce its orders.

The present law of divorce is somewhat of a stumbling block, as I feel that separations are generally a bad thing, and if the grounds for divorce were altered, I would give to the Family Court the power to dissolve a marriage where, in the opinion of the court, this was the course most beneficial to the parties.

My scheme may sound somewhat impracticable, but it seems to me that a court of this description would meet a widespread need, create happier homes, a more reasonable attitude to marriage and consequently a better race.

The PRESIDENT congratulated Miss Morrison on being the first woman to read a paper before the Society. He hoped to hear more papers from women in the future.

Mr. W. G. WELLER (Bromley) complained that the separation order was often obtained too easily. If justices would exercise a little more patience and not be so anxious to get rid of the cases women would not be so anxious to rush to the court on the slightest provocation. Much trouble was caused by the relations-in-law. He was opposed to matrimonial cases being heard *in camera*; the fear of publicity kept most women within the bounds of truth. An arrangement which worked well in his own court was to set aside a special day and to hear these cases at half-past ten in the morning. He commended Judge Parry's book, in which it was suggested that magistrates should interview applicants personally.

Mr. HOWARD WATSON (Liverpool) said that most of Miss Morrison's suggestions were in practice in Liverpool.

Mr. NORDON suggested the restoration of the ducking-stool for the perpetual scolds and the stocks for the drunkard.

Mr. FRANCIS C. CONINGSBY, LL.B. (Lond.) read the following paper :—

SOME INTERNATIONAL ELEMENTS IN MATRIMONIAL CAUSES.

In venturing to place before this meeting a subject which at first sight may appear to be of purely academic interest, a word of preliminary explanation is perhaps advisable. It is common knowledge among lawyers that, until comparatively recently, matters relating to private international law were regarded as outside the scope of general practice. Indeed, it is safe to state that the average solicitor or barrister of the Victorian era hardly knew the meaning of the term " Private International Law," and certainly gave no time or thought to the study of that subject. However, the rapid growth in the present century of international relationships, stimulated by the movements of population during and after the great war, has inevitably led lawyers to recognise the practical importance of that branch of our law which has been defined as " the body of principles determining which of two or more systems of law shall prevail when they compete in any particular case." Indeed, there can now be few English practitioners of standing and experience who have not at some time had to deal with problems propounded by clients which necessitate an understanding of the relative rule of private international law ; and such problems, arising perhaps in the early years of practice, should serve to whet our appetite for the understanding of a branch of law which in its essentially international aspects occupies a peculiar position in our system of jurisprudence and which should therefore readily create special interest for those who study it.

That The Law Society has not been slow to appreciate the growing importance of private international law is clearly evidenced by the fact that it was decided several years ago to include this subject in the compulsory curriculum for the Society's Final Examination, thus indicating the Society's view that the education of the budding solicitor would be incomplete and therefore inadequate without some knowledge of rules relating to the conflict of laws.

It is still more symptomatic that in recent years fresh editions of all the recognised text-books relating to private international law have been called for (see e.g., Dicey's Conflict of Laws, 4th ed. ; Foote's Private International Law, 5th ed. ; Westlake's Private International Law, 6th ed.) and that, as will be seen, these new editions are now quickly becoming out of date. This has not primarily been due to statute law. Unlike France and Germany and some other European countries, whose codes contain many provisions dealing with the rules relating to choice of laws, the English statute book is for the most part silent on the subject. This is, in our view, to be regretted, since case law is never in the long run so satisfactory as substantive legislation. It seems that this subject has been peculiarly productive of a series of decisions on various points which can only with the utmost difficulty be reconciled with one another. The last three decades have seen numerous decisions, covering a great variety of points some of which are of considerable practical importance, but within the limits of this paper it is not possible to refer to all these cases.

To establish the claim for the immediate practical importance of the subject of Conflict of Laws, it will be sufficient to mention one branch of law only. Matrimonial causes have been chosen not merely because the family relationships which they involve have been productive for some centuries of complex questions of private international law, but also because there have been some peculiarly interesting and significant decisions. Indeed, to prove this point, it will not be necessary to refer back to any case prior to 1921.

That on marriage the wife takes the nationality and domicil of the husband is a well-established principle of English law. As regards nationality, several attempts have been made to secure modification of this rule. For various reasons, these attempts have hitherto met with little or no success. However, feminine persistence in the matter of securing legislative reform is, since the achievement of extension of the suffrage to women, almost axiomatic. There can be little doubt that the late Dr. Ethel Bentham's " Nationality of Women Bill," followed as it has been by direct representations to the League of Nations Assembly in July of the present year with a view to securing international uniformity of outlook in the matter, will be ultimately productive.

As regards the rule in respect of domicil, in order to cope with distressing circumstances which have emerged from time to time, the courts have stretched the law on the subject to such an extent that it is difficult to define the true position at the present day. Passing over the earlier conflicting decisions (see, e.g., *Santo Teodoro* v. *Santo Teodoro* (1876), 5 P.D. 79 ; *Briggs* v. *Briggs* (1880), 5 P.D. 163 ; *Ogden* v. *Ogden* [1908] P. 46 , *Stathatos* v. *Stathatos* [1913] P. 46 ; and *De Montaigu* v. *De Montaigu* [1913] P. 154). The case of *Lord Advocate* v. *Jaffrey* [1921] A.C. 146, falls to be considered. In this House of Lords decision the facts were that a marriage had taken place in Scotland between a domiciled Scotsman and a Scotswoman. After some years of residence there, the husband went to Australia with his wife's consent, and remained there until his death. He never communicated with her and never expressed any intention of returning to Scotland. Some sixteen years before his death, his wife heard that he had contracted a bigamous marriage, and she accordingly commenced proceedings in Scotland for dissolution of marriage. It was held that the husband was domiciled in Australia, and there was " nothing in the circumstances of the case to take it out of the ordinary rule that a wife's domicil is that of her husband," and consequently her domicil was Australian. The case afforded the opportunity for again emphasising the main rule that the English courts will not exercise jurisdiction in divorce except where the husband is domiciled here at the commencement of the suit.

As to this, Viscount Haldane, stated : " Not only is there no authority for the proposition that under the laws of these islands husband and wife can have, while they continue married, distinct domicils, but if it were otherwise, the consequences in such circumstances as those before us would be extraordinary. Proceedings for dissolving the status of marriage might be carried through in two jurisdictions, possibly with different results. The status itself resulting from marriage might become modified without judicial interposition. The very evils, the exclusion of which has been said by eminent writers on international law to require the acceptance of the principle of domicil unrestrictedly, would be again introduced, and introduced under conditions so vague that no definite limit could be assigned to their operation."

Viscount Cave delivered the following interesting dictum : " I doubt whether the rule as to a wife's domicil following that of her husband is founded only upon her obligation to live with him. It appears to me to be more correct to say that it is a consequence of the union between husband and wife brought about by the marriage tie . . . and while the rule is no doubt abrogated by a divorce *a vinculo*, and possibly (although this has not been finally decided) by divorce *a mensa et thoro* or a judicial separation, I do not think there is any reliable authority for the proposition that the mere existence of grounds for a decree of divorce or separation is of itself enough to enable the wife to set up a separate domicil." The suggestion here that a decree for judicial separation might give the wife a right to a separate domicil cannot, however, now be accepted as sound, particularly in view of the decision next to be considered. In fact, in the same case, Lord Shaw deals incidentally with the query. " I must not," he stated, " myself be held as assenting to the view that it has ever yet been decided by law that even a judicial separation properly and formally obtained would operate as a change in the so-called, and, in my opinion, very doubtfully named *domicilium matrimonii*. I see the greatest difficulty in any invasion of the principle which appears to me to be fundamental—namely, that that unity which the marriage signifies is regulated by one domicil and one domicil alone, i.e., that of the husband."

We then have the more recent case of *Attorney-General for Alberta* v. *Cook* [1926] A.C. 444, in which it was again emphasised that a decree for judicial separation, made under the Matrimonial Causes Act, 1857, s. 16, does not enable the wife to acquire a domicil different from that of her husband so as to entitle her to petition for a divorce in a court other than that of the husband's domicil. Lord Merrivale definitely stated : " The contention that a wife judicially separated from her husband is given choice of a new domicil is contrary to the general principle on which the unity of domicil of the married pair depends ; divorce *a mensa et thoro* gave no such right ; and the statute of 1857 was not framed with that intention and does not effect that purpose . . . Singular anomalies must arise in respect of the causes for divorce . . . if upon the true construction of the clauses relating to judicial separation a wife who is judicially separated is thereby qualified to choose an independent domicil . . . it would seem to follow that a guilty wife judicially separated may, by virtue of domicil acquired in a foreign jurisdiction, become entitled to cite her husband to answer there a suit for divorce upon grounds sufficient by the local law but unknown in the law of his domicil. The marriage of British subjects would thus become liable to dissolution by authority to which they owe no obedience." This disposes of Viscount Cave's *obiter* referred to above. Finally, there is the more recent authority of *H.* v. *H.* (No. 2) [1928] P. 206. A wife obtained in England a decree of judicial separation from her husband. He later

abandoned his British domicil and, after acquiring a domicil in France, committed adultery there. The wife unsuccessfully petitioned for divorce, the court holding that it had no jurisdiction. Lord Merrivale observed that the decree of judicial separation did not stereotype the husband's domicil, and consequently he was not estopped from pleading subsequent change of domicil. The theory that the wife could revert to her domicil of origin, or her ante-nuptial domicil, or even her "matrimonial domicil" up to the time of the husband abandoning his English domicil, was ignored.

The better opinion would seem to be that, in spite of certain decisions of doubtful authority and an exception carefully elaborated by Dicey (on the basis of those decisions) (Dicey, "Conflict of Laws," 4th ed., p. 294; and see his Appendix, Notes 13 and 14), no such exception does in fact exist. That it ought to exist, and may yet be created by statute, is another matter altogether.

In matrimonial causes, next in importance to suits for dissolution are petitions for nullity of marriage. The earlier decisions (which cannot be reviewed here) (see, e.g., *Simonin* v. *Mallac* (1860) 2 Sw. & Tr. 67; *Sottomayor* v. *De Barros* (1877), 3 P.D. (C.A.) 1, and (1879) 5 P.D. 94; *Niboyet* v. *Niboyet* (1878) 4 P.D. (C.A.) 1; and *Roberts* v. *Brennan* [1902] P. 143), certainly trended on the whole against domicil as an exclusive ground for jurisdiction. *Forum loci celebrationis* was usually recognised as having, at least, concurrent jurisdiction. Reference may first be made to two recent decisions in which the English courts had to consider the effect of foreign nullity decrees.

In *Mitford* v. *Mitford and Von Kuhlmann* [1923] P. 130, a domiciled Englishman married in Germany a German woman, domiciled there, by a form good in that country, but not good in England. A nullity decree was subsequently obtained in Germany on grounds adequate there, but entirely inadequate according to English law. (The actual grounds were under Art. 1333 of the Civil Code of Germany. They were not discussed in the English court and could not have been pleaded as a ground of nullity according to English law.) It was held by Sir Henry Duke, P., that the nullity decree must be recognised here on the basis that "the validity of a marriage between a domiciled Englishman and a woman domiciled in a foreign country" (where the marriage is celebrated) "is a matter properly cognisable by the courts of that country," and the English courts will not go behind the decree to consider whether the grounds on which it was obtained would be regarded as adequate by English law.

But the jurisdiction of the *lex loci contractus* can at best be regarded as only concurrent with that of the *lex loci domicilii*. Thus, in *Salvesen or Von Lorang* v. *Administrator of Austrian Property* [1927] A.C. 641, the marriage took place in France between a domiciled Austrian and a domiciled Scotswoman. The parties then took up permanent residence in Germany, where the marriage was subsequently annulled on the grounds that formalities required by French law had not been complied with. The decree of nullity was recognised in this country on the ground that it had been made by the court of the parties' domicil, and would not therefore be reconsidered here, not even, apparently, if the marriage had been solemnised here. It was laid down that "a decree of nullity of marriage pronounced by a court of competent jurisdiction, whatever be the ground of the decree, is a judgment determining status, and is equivalent to a judgment *in rem*. Such a decree will, in the absence of fraud or collusion, be recognised as binding and conclusive by the courts of England and Scotland, unless it offends against British notions of substantial justice."

This brings us to the much-discussed case of *Inverclyde* v. *Inverclyde* [1931] P. 29, the facts of which will probably be fresh in the minds of most of us. The parties married in London in 1929, and it was common ground at the hearing that the husband was domiciled in Scotland, although he had residences in England as well as Scotland. The wife resided in London, but her domicil became that of her husband on marriage. In 1930 she petitioned the English court for a decree of nullity on the ground that her husband was incapable of consummating the marriage. A preliminary issue came before Bateson, J., as to whether he had any jurisdiction to entertain the wife's petition. In his considered judgment, he first referred to counsel's arguments. On behalf of the petitioner it had been argued that, since the Ecclesiastical Courts had always exercised jurisdiction where the parties were resident in England, and since the Matrimonial Causes Act of 1857 (s. 22) transferred that jurisdiction to the High Court, which it was alleged had since been exercised in many decisions (where the parties were resident, or married in, England), it followed that the judge had jurisdiction in that case. It was also argued that no distinction had been made prior to 1857 as regards the kind of nullity (whether for impotence, illegality or want of formality), but it was admitted that certain dicta in *Salvesen or Von Lorang* v. *The Administrator of Austrian Property*, [1927] *supra* might be taken to indicate that exclusive jurisdiction should be exercised by the court of domicil. For the respondent, it had been argued that a differentiation should be made in the case of a suit for nullity on the ground of impotence, since in that case the marriage was merely voidable and not void (as is normally the effect of material informality or of illegality). The marriage was valid until annulled, and consequently the petition was on a level with one for dissolution of marriage, in which (since *Le Mesurier* v. *Le Mesurier* [1895] A.C. 517, the court of domicil unquestionably has exclusive jurisdiction. It was further argued that in all nullity suits a decree was sought which would affect the status of the parties and would therefore be a judgment *in rem*, and the court of the domicil should be the only court competent to grant a decree affecting status.

BATESON, J., expressed agreement with the argument for the respondent. He, however, drew the distinction between void and voidable marriages, so that his judgment leaves the question open as to whether domicil is to be regarded as the sole ground of jurisdiction in the case of void marriages. This is a pity, since on the basis of alteration of status effected by the decree of nullity on which he laid stress, there is little practical distinction between void and voidable marriages. However, he desired to place the present petition on the same basis as a petition for dissolution of marriage, and he observed that, in the United States and in Scotland, a petition for nullity on the grounds of impotence was in fact in the form of a suit for dissolution. After pointing out that residence had been definitely superseded by domicil as a ground for jurisdiction in divorce, by reason of *Le Mesurier* v. *Le Mesurier*, he cited dicta from *Salvesen or Von Lorang* v. *The Administrator of Austrian Property* [1927], *supra*, to which he evidently attached great weight, saying that in his view those *dicta* put it beyond doubt that the opinion he had expressed was the right one. In fact, Lord Phillimore's dictum dealt specifically with the ground of impotence. In conclusion, he observed that it was "much more expedient to have the certainty of one court and one court only giving judgments *in rem* and deciding the question of status of married persons."

This judgment is open to criticism on several grounds. One of these we have referred to above.

It has been pointed out that "the statutes drew such a marked line of difference between grounds of dissolution and nullity that it is open to strong doubt if, as suggested in the judgment in Inverclyde, a suit for nullity for impotence is really a suit for dissolution, and that the difference in procedure is only a matter of form." Further, "if the judgment in Inverclyde is right, a Mexican or Russian or any other alien with a foreign domicil, might marry an Englishwoman in England, and, though resident in England, she would be debarred from suing for nullity for impotence except in the court of her husband's domicil" (Brown & Latey's "Divorce" (1931 ed.), p. 55).

Another objection is that to introduce considerations of expediency into the decision of a difficult point of law is a manifest weakness. Further, even if it were admitted that it is expedient for one court to have exclusive jurisdiction, this still leaves to be decided whether and why the long-established jurisdiction of residence or *locus contractus* should be superseded by domicil. A specially strong case needs to be made out for the change where, as in this case, the parties were not only resident, but were also married in England. However, the obvious analogy with a divorce suit is, undoubtedly a weighty argument. As regards void marriages, there is a further argument in favour of the English court exercising jurisdiction even though the husband be not domiciled in England, which does not appear to have been sufficiently expounded. Where a wife is petitioning for her marriage to be treated as annulled and where her ante-nuptial domicil is, as in the case under consideration, English, if her petition is successful she will revert to her English domicil and it will thus be declared by the court that she has at all times in fact been domiciled in England and that at all times therefore she was entitled to seek the aid of the English court in respect of matrimonial causes. However, a distinction can here be clearly made between void and voidable marriages. In the former, the effect of a nullity decree would be to indicate that she had never lost her English domicil; while in the latter, the effect would apparently be to leave her with her matrimonial domicil (as in the case of dissolution of marriage). If Bateson, J.'s decision is taken to be confined to nullity decrees in respect of voidable marriages, then the argument elaborated above cannot be used against his decision. If, however, he seeks to lay down a hard-and-fast rule for all forms of nullity petitions then the argument is clearly pertinent.

It may further be queried whether the decision in the *Inverclyde Case* does not conflict with *Mitford* v. *Mitford and*

*Von Kuhlmann* [1923] to which reference has already been made, where a foreign nullity decree by *forum loci contractus* was recognised here. As has been seen, the *Inverclyde Case* lays it down as regards voidable (and possibly also void) marriages, the court of the domicil has exclusive jurisdiction in nullity proceedings. The actual decision was in respect of an English petition for nullity. It does not necessarily follow that the same principles will be applied when the English courts have to consider a foreign nullity decree. In the absence of a decision of the House of Lords, the position is uncertain and therefore unsatisfactory. It can be and has been argued that in nullity petitions of the nature of *Mitford* v. *Mitford* the question in dispute in that case goes to the root of the marriage contract and in fact queries whether or not the parties were ever married. If in such cases the validity of the marriage can be said to be at stake, it is certainly most reasonable that a competent forum should be the court of the country where the marriage was celebrated. In other words, it is argued that the court should have a right to " keep its register clear " by determining the validity of all marriages celebrated within its jurisdiction. Mistake, as distinct from incapacity, is akin to questions as to form of the ceremony which are indubitably governed by *lex loci*. In the *Mitford Case*, even if mistake had been regarded as a question of capacity and therefore to be governed by *lex domicilii*, this would not have altered the decision, since the wife had been of German domicil up to the time of completion of the marriage contract.

This paper ought not to be closed without referring to the important recent case of *Nachimson* v. *Nachimson* [1930] P. 217. A Russian woman sought judicial separation from a Russian, who, although domiciled in Russia, was resident in England. The marriage had taken place at Moscow under the Soviet law, which permitted either party to dissolve the marriage at will on application to the court, and, by mutual consent, to dissolve it by registering the divorce at the proper registration office. It was held by the Court of Appeal, overruling Hill, J.'s, decision, that the marriage was a valid one, and its validity could not be affected " by consideration of the means whereby it may be dissolved if and when the question falls to be determined by the law of the domicil of the parties." The court followed Sir James Hannen's principle (as laid down in *Sottomayor* v. *De Barros* (1879), 5 P.D. 94) that marriage " is a status arising out of a contract to which each country is entitled to attach its own conditions both as to its creation and duration."

The following extracts from the judgments of the Lords of Appeal are instructive :—

Said Lord Hanworth (pp. 225 and 227) : " Some countries allow greater facilities for the dissolution of the marriage tie than others, and if dissolubility was of the essence of the contract, and a test of the validity of the marriage tie, it would be a matter of degree to be determined in varying cases whether the marriage was to be estimated as binding." . . . " It may be that our minds, trained to regard marriage as in most cases sanctified by religious rites—in others by a civil procedure not less binding—recoil at the recognition of a union capable of being dissolved so easily as the marriage of these spouses when contracted in Russia appears to have been. Nevertheless, that marriage has the essential legal ingredients. It is the union of one man and one woman to the exclusion of all others ; it is to last for life unless it is dissolved in a manner that is made definite and final by registration. It was duly entered into in accordance with the forms required by the *lex loci* of the domicil of the parties to it."

Referring to the decision of Hill, J., it was observed by Lawrence, L.J., " In my opinion the learned judge in arriving at this conclusion has erroneously treated the provisions for the disruption of the marriage tie enacted by the Russian law as conditions incorporated in and forming part of the marriage contract, instead of treating them, as in truth they are, as conditions of defeasance enacted by the law of domicil of the spouses, which conditions in no way depended upon any agreement between them, and which, moreover, they were powerless to alter or escape from " (P. 230).

In order to appreciate the argument accepted by the Court of Appeal, consideration must be given to the marriage laws of the Union of Soviet Republics. The form of marriage consists of registration before the proper officer, followed by co-habitation. Under a statute of 1918, such marriages were declared to last during the life-time of the spouses, but could be terminated at the wish of either on application to the court of the country where the other resided or, on mutual consent, by mere registration. In 1927, the statute was modified, by provision that no such application should be needed, if the desire for dissolution was registered by either party in the proper office. In considering the validity of the marriage (which took place prior to 1927) the Court of Appeal had no need to consider the effect of the statute of 1927. It followed Lord Dunedin in *Berthiaume* v. *Dastous* [1930] A.C. 79, 9 Bligh 110, when he stated : " If there is one question better settled than any other in international law it is that as regards marriage—putting aside the question of capacity—*locus regit actum*." The marriage could not properly be considered on the same footing as though it had been celebrated in a barbarous country. Clearly Russia must be regarded as a civilised state capable of making its own laws which must receive the same respect as is shown to nations with a Christian system of laws. While the Russian principles may indeed be so novel as to strike at all accepted notions in a Christian country, dissolubility must not be made the primary test of the validity of marriage. Many States, notably in North America, permit dissolution on the flimsiest and vaguest of grounds. Marriages in such States cannot for this reason alone be treated as void by the English courts.

But, sooner or later, the courts will have to consider a Russian dissolution by consent. Their task will not be an easy one. It has, in fact, already been pointed out that the following questions, which are of indisputable importance, were left undecided : " Whether the English courts will recognise a law of a quasi-Christian country permitting (1) a divorce without previous notice to the other spouse ; (2) a divorce at will by mere registration without a competent court or authority having any discretion to refuse it." (See Brown and Latey " Divorce," 1931 ed., 343 ; see also an illuminating article by Mr. S. G. Vesey-Fitzgerald in " The Law Quarterly Review " (1931-XLVII-186, pp. 270 *et seq.*)).

In conclusion, it should be of practical interest to inquire a little into the question whether domicil as the basis of matrimonial jurisdiction is in fact the most convenient to meet modern requirements. The arguments in favour of exclusive jurisdiction of the court of domicil was well stated by Lord Penzance in *Wilson* v. *Wilson* (1872) L.R. 2 P. & D. 435) : " It is the strong inclination of my own opinion that the only fair and satisfactory rule to adopt on this matter of jurisdiction is to insist upon the parties in all cases referring their matrimonial differences to the courts of the country in which they are domiciled. Different communities have different views and laws respecting matrimonial obligations, and a different estimate of the cause which should justify divorce. It is both just and reasonable, therefore, that the differences of married people should be adjusted in accordance with the laws of the community to which they belong, and dealt with by tribunals which alone can administer those laws. An honest adherence to this principle, moreover, will preclude the scandal which arises when a man and woman are held to be man and wife in one country and strangers in another." He adds, however : " It is not possible to avoid to some extent collision with the courts of different countries, because if the courts of every country adhered to domicil as the rule of jurisdiction, there would still remain the fact of domicil to be established ; and as all countries do not adopt the same rules of evidence, the evidence on this question might be very different in one country to what it might be in another."

On the other hand, it has been pointed out that a colonial or foreigner may come to this country, take advantage of its laws and marry an Englishwoman, with the result that if she should wish to dissolve the marriage she must go to the court of the country in which her husband is domiciled. Here hardship may well result to the woman. If, however, the wife were given liberty to seek divorce from the *forum loci contractus*, or even from the law of her domicil before marriage, there might well be as many instances of hardship to the husband. Nevertheless, as regards nullity decrees, until *Inverclyde* v. *Inverclyde*, it seems to have been regarded as by no means inconvenient to award jurisdiction to the *forum loci contractus*, and this although, as we have seen, petitions for nullity on the ground of a voidable marriage are very much on a par with suits for dissolution. It has been argued also that if jurisdiction is to be allowed to our courts on the ground of the marriage having taken place in this country, recognition of foreign decrees will also have to be based on the same principle. As regards divorce, it may well be that the *lex loci contractus* recognises grounds for divorce which are not recognised here, but it is established that that is no ground for refusing to acknowledge a foreign decree, since the same difficulty arises where the domicil of the parties is foreign. Furthermore, *Mitford* v. *Mitford* accorded jurisdiction in foreign nullity decrees to the *forum loci contractus*. It remains to be questioned whether *Inverclyde* v. *Inverclyde* is going to affect the attitude of our courts to foreign nullity decrees. The logical result would be to alter their attitude, although the subject of foreign decrees did not come under consideration in *Inverclyde* v. *Inverclyde*.

There can be no doubt that at one time there was a strong body of opinion in England in favour of the *lex loci contractus*. It was argued that " the law of the place where the marriage

is celebrated furnishes a just rule for the interpretation of its obligations and rights, as it does in the case of other contracts which are held obligatory according to the *lex loci contractus*. It is not just that one party should be able, at his option, to dissolve a contract by a law different from that under which it was formed, and by which the other party understood it to be governed. If any other rule than the *lex loci contractus* is adopted, the law of marriage, on which the happiness of society mainly depends, must be completely loose and unsettled; and the marriage state, whose indissolubility is so much favoured by Christianity and by the best interests of society, will become subject to the mere will and almost to the caprice of the parties as to its duration. The courts of the nation whose laws are most lax upon this subject will be constantly resorted to for the purpose of procuring divorces . . . In this matter a nation may find its own inhabitants throwing off all obedience to its own laws and institutions and subverting, by the interposition of a foreign tribunal, its own fundamental policy" (Story's "Conflict of Laws," §225, p. 292, *et seq.*). This argument overlooks the practical facts that it is neither easy nor inexpensive to go abroad and acquire a foreign domicil for the purpose of facilitating a divorce.

The truth of the matter is that the vast majority of divorce cases which come before the English courts arise between parties who are both of English origin and domicil, and consequently care must be taken not to allow exceptional cases to interfere with a rule which is otherwise most convenient. The possible hardship to the husband in any alteration of the existing rule as to divorce may be thus illustrated. An Englishman goes to the Colonies, where he marries a Colonial woman, they return to England and take up permanent residence here. The wife subsequently leaves him and returns to the Colony where she dwelt prior to marriage. There she seeks divorce (on the hypothetical jurisdiction of the *forum loci contractus*) falsely alleging adultery against her husband. Would it be right to expect the husband to leave his business and go, for instance, to South Africa, to defend the suit or otherwise have to leave it undefended? Again, an Englishman goes to Japan on business and marries there the daughter of an English official or trader. They then return to England. When seeking a nullity or divorce decree against his wife, if *lex loci contractus* is to have exclusive jurisdiction, the husband would need to return to Japan in order to commence proceedings.

It may be suggested that *lex loci contractus* should be recognised as conferring alternative jurisdiction in respect of divorce and nullity decrees. An alternative jurisdiction is, however, clearly to be avoided if practicable, since it can readily lead to further confusion, particularly where proceedings are commenced at about the same time, e.g., by the husband in the *forum loci contractus*, and by the wife in the *forum domicilii*.

Further, it has been the policy of the courts of this country to discourage methods of rendering easier dissolutions of marriage. Hence, the special scrutiny accorded to all decrees obtained in America, where divorce is notoriously easy to procure. Comparatively few English people have the time, means or inclination to acquire an American domicil with a view to facilitating divorce. On the other hand, if the *forum loci contractus* were known to be an alternative, many young couples desirous of entering upon an experimental marriage might arrange a prolonged holiday abroad so as to have the marriage ceremony performed in a country where subsequent divorce could readily be obtained, if desired, on some ground wholly inadequate according to English social as well as legal principles. On grounds, therefore, of expediency, as well as convenience, exclusive jurisdiction of the court of domicil in respect of divorce decrees would seem to be best, although, as we have shown, there are manifest objections to this. It is another question, however, whether this exclusive jurisdiction should be extended to all petitions for nullity as well as for divorce. (Those further interested in this subject should refer to the case of *Warrender* v. *Warrender* (1835), 9 Bligh, 110, *et seq.*, where Lord Brougham gives an extensive and most instructive examination of the general principles of international law; although it must be borne in mind that the views of international jurists have been somewhat modified since the date of that decision.)

Some have suggested the setting up of "a general international court" to decide matrimonial suits in which questions of private international law are involved. As to this, Von Bar long ago wisely commented, "an international tribunal of the kind would mean, owing to the enormous distances at which parties might be from the seat of the court, a complete denial of justice. Again, the decisions of all courts on questions of private international law must in practice rest primarily on the legal principles of their own country, but, since in every case that came before this international court there would probably be a majority of judges belonging to countries different from that to which the case belonged, there would be imminent danger that the law of that country would not be respected" ("Private International Law," G. R. Gillespie's translation, p. 397.)

Mr. J. W. ROBSON (Manchester) proposed an international conference to settle the points raised by the author of the paper, who concurred in the suggestions.

*(To be continued.)*

# Legal Notes and News.

## Honours and Appointments.

The King has been pleased to approve that the dignity of a Baronetcy of the United Kingdom be conferred on Alderman Sir WILLIAM PHENÉ NEAL, solicitor, on the occasion of his retirement from the office of Lord Mayor of London. Sir William was admitted a solicitor in 1888 and practices at 14 and 15, Coleman-street, E.C.2, and was Lord Mayor for the City of London. A further honour was conferred upon the Lord Mayor at the annual dinner of the Paviors' Company on Monday night when he was presented with his portrait in oils. The Lord Mayor, after accepting the gift, gave to the company a silver gilt replica of the Warwick vase. It will be borne in mind that he served as clerk to the Guild for over twenty-five years and was elected Master in December last.

The King has been pleased to approve a recommendation of the Home Secretary that Mr. EUSTACE CECIL FULTON be appointed Recorder in succession to the late Sir John Mitchell. Mr. Fulton is one of the Counsel to the Treasury at the Central Criminal Court.

The King has approved a recommendation of the Home Secretary that Mr. JAMES WILLOUGHBY JARDINE, K.C., be appointed Recorder of Newcastle-on-Tyne, to succeed Mr. WALTER HEDLEY, K.C., who has been appointed Recorder of Sheffield.

Sir DENNIS HERBERT, K.B.E., M.A., M.P., solicitor, has been appointed Chairman of Ways and Means by the House of Commons. Sir Dennis, who is a member of the firms of Clarke, Rawlins & Co. and Beaumont & Son, of 380, Gresham House, Old Broad-street, E.C.2, has represented Watford in Parliament since 1918, and was Deputy-Chairman of Ways and Means from 1928, and a member of the Council of The Law Society since 1923.

Mr. J. T. GOLDSMITH, of the firm of Rising & Ravenscroft, of 95, Cannon-street, E.C.4, has been appointed a Commissioner by the Supreme Court of Judicature at Bombay, to take Oaths and Evidence in and for the City and County of London.

Mr. E. F. IWI, of 5 and 6, Clement's-inn, W.C.2, has been appointed a Commissioner of the Supreme Court of the Gold Coast Colony for taking in England affidavits and declarations and receiving production of documents or for taking the examination of witnesses on interrogatories in respect of any proceedings.

Mr. G. M. OLIVER has been appointed Assistant Town Clerk by the Ossett Town Council.

## Professional Announcements.

**(2s. per line.)**

LAWRANCE, MESSER & CO., who for upwards of eighty years have occupied offices at 14, Old Jewry Chambers, E.C.2., have now removed to 16, Coleman Street, E.C.2. The Telephone Number remains the same: Metropolitan 6211, and the Telegraphic Address is "Rancebamus, Ave, London."

### QUAINT CEREMONY AT THE LAW COURTS.

The annual ceremony took place at the Law Courts on Tuesday last of the Rendering of Quit Rent Services to the Crown by the Corporation of the City of London.

The services are two in number—one by the tenants and occupiers of a piece of waste ground called The Moors, in Shropshire, and the other by the tenants and occupiers of a tenement called The Forge, in the parish of St. Clement Danes, London, W.C. The sites of both places are doubtful.

Mr. A. F. L. Pickford, the City Solicitor, rendered the services. For The Moors he produced a new hatchet and billhook, with which he cut faggots. For The Forge he counted out six horseshoes and sixty-one nails.

The King's Remembrancer (Sir George Bonner) formally acknowledged the services.

### RAILWAY RATES TRIBUNAL.

To meet the general convenience of parties, the Railway Rates Tribunal have postponed their next sitting, which was fixed for Tuesday, 27th October (polling day), until 10.30 a.m. on Thursday, 29th October. At that sitting the Tribunal will hear applications and objections with regard to alterations in and additions to the classification of merchandise and the reductions from the standard charges where damageable merchandise is carried under owner's risk conditions, and with regard to the allowance of rebate under the railway freight rebate scheme.

### THE GRAND JURY SYSTEM.

The October session for the jurisdiction of the Central Criminal Court was opened at the Sessions House, Old Bailey, on Tuesday last. The Lord Mayor, who was accompanied by Mr. Alderman and Sheriff P. W. Greenaway and Mr. Sheriff G. H. Wilkinson, presided at the opening ceremony, and there were also present on the Bench the Recorder of London (Sir Ernest Wild, K.C.), Alderman Sir Percy Vincent, Mr. Under-Sheriff Sidney Newton, Mr. Under-Sheriff T. Howard Deighton, solicitor, and the Secondary (Mr. W. N. Earle).

The new Sheriffs, Mr. Alderman Greenaway and Mr. Wilkinson, were congratulated by the Recorder and the Grand Jury on their presence for the first time in that capacity.

Mr. Alderman and Sheriff Greenaway, on behalf of himself and Mr. Sheriff Wilkinson, thanked the Recorder and the Grand Jury for the welcome extended to them.

The Recorder, in charging the Grand Jury, said the names of seventy-nine persons appeared in the calendar. He was happy to say that that was a number below the average considering that the interval between the beginning of the September session and the present had been five weeks. In the calendar there were three charges of murder, one of manslaughter, two of attempted murder, and seven of bigamy.

The Recorder, in the course of his address, said it was of fundamental importance to the liberty of the subject to maintain unimpaired and uninterrupted the Grand Jury system. Speaking from an experience of ten years on the Bench and thirty years at the Bar, he hoped that it would be many a long day before the Grand Jury system was ever abolished or interrupted. Every one, said the Recorder, had now to economise, but it would be a false economy that robbed the subject of the safeguard provided by the Grand Jury.

### M. POINCARE RESIGNS PARIS BAR HEADSHIP.

M. Raymond Poincaré has intimated in a letter to the Batonnier Fernand Payon, of the Paris Bar, that his present state of health makes it impossible for him to assume the office of Batonnier, or head of the Paris Bar, to which he was elected last June, and which he was to begin to exercise this month on the re-assembly of the courts.

The office of Batonnier, to which the former President of the Republic always attached the greatest importance, involves a considerable amount of work.

## Court Papers.

### Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

| DATE | EMERGENCY ROTA. | APPEAL COURT No. 1. | GROUP I. MR. JUSTICE EVE. | MR. JUSTICE MAUGHAM. |
|---|---|---|---|---|
| | | | Witness, Part I. | Non-Witness. |
| M'nd'y Oct. 26 | Mr. Hicks Beach | Mr. Ritchie | Mr.*Hicks Beach | Mr. Jones |
| Tuesday .. 27 | Andrews | Blaker | Blaker | Hicks Beach |
| Wednesday 28 | Jones | More | *Jones | Blaker |
| Thursday . 29 | Ritchie | Hicks Beach | Hicks Beach | Jones |
| Friday .. 30 | Blaker | Andrews | *Blaker | Hicks Beach |
| Saturday .. 31 | More | Jones | Jones | Blaker |

| DATE | GROUP I. MR. JUSTICE BENNETT. | MR. JUSTICE CLAUSON. | GROUP II. MR. JUSTICE LUXMOORE. | MR. JUSTICE FARWELL. |
|---|---|---|---|---|
| | Witness. Part II. | Non-Witness. | Witness. Part II. | Witness. Part I. |
| M'nd'y Oct. 26 | Mr.*Blaker | Mr. More | Mr.*Andrews | Mr. Ritchie |
| Tuesday .. 27 | *Jolly | Ritchie | *More | *Andrews |
| Wednesday 28 | *Hicks Beach | Andrews | *Ritchie | More |
| Thursday . 29 | Blaker | More | Andrews | *Ritchie |
| Friday .. 30 | Jones | Ritchie | *More | Andrews |
| Saturday .. 31 | Hicks Beach | Andrews | Ritchie | More |

*The Registrar will be in Chambers on these days, and also on the days when the Courts are not sitting.



## Stock Exchange Prices of certain Trustee Securities.

Bank Rate (20th September, 1931) 6%. **Next London Stock Exchange Settlement Thursday,** 5th November, 1931.

| | Middle Price 21 Oct. 1931. | Flat Interest Yield. | Approximate Yield with redemption |
|---|---|---|---|
| **English Government Securities.** | | £ s. d. | £ s. d. |
| Consols 4% 1957 or after | 87 | 4 12 0 | — |
| Consols 2½% | 56 | 4 9 3 | — |
| War Loan 5% 1929-47 | 99 | 5 1 0 | — |
| War Loan 4½% 1925-45 | 95 | 4 14 9 | 5 0 0 |
| Funding 4% Loan 1960-90 | 88 | 4 10 11 | 4 12 0 |
| Victory 4% Loan (Available for Estate Duty at par) Average life 35 years | 93 | 4 6 0 | 4 8 0 |
| Conversion 5% Loan 1944-64 | 101 | 4 19 0 | 4 18 9 |
| Conversion 4½% Loan 1940-44 | 96 | 4 13 9 | 4 18 0 |
| Conversion 3½% Loan 1961 | 76 | 4 12 1 | — |
| Local Loans 3% Stock 1912 or after | 63½ | 4 14 6 | — |
| Bank Stock | 242 | 4 19 2 | — |
| India 4½% 1950-55 | 68½xd | 6 11 5 | — |
| India 3½% | 52½ | 6 13 4 | — |
| India 3% | 44½ | 6 14 10 | — |
| Sudan 4½% 1939-73 | 92½ | 4 17 4 | 4 19 0 |
| Sudan 4% 1974 | 82½ | 4 17 0 | 5 0 0 |
| Transvaal Government 3% 1923-53 (Guaranteed by Brit. Govt. Estimated life 15 yrs.) | 80 | 3 15 0 | 4 9 0 |
| **Colonial Securities.** | | | |
| Canada 3% 1938 | 86½ | 3 9 4 | 5 6 9 |
| Cape of Good Hope 4% 1916-36 | 92½ | 4 6 6 | 5 15 0 |
| Cape of Good Hope 3½% 1929-49 | 80½ | 4 6 11 | 5 3 8 |
| Ceylon 5% 1960-70 | 96 | 5 4 2 | 5 4 6 |
| Commonwealth of Australia 5% 1945-75 | 73 | 6 17 0 | 6 19 10 |
| Gold Coast 4½% 1956 | 89 | 5 1 2 | 5 6 9 |
| Jamaica 4½% 1941-71 | 91½ | 4 18 4 | 5 0 0 |
| Natal 4% 1937 | 92½ | 4 6 6 | 4 15 0 |
| New South Wales 4½% 1935-1945 | 63 | 7 2 10 | 8 0 6 |
| New South Wales 5% 1945-65 | 65 | 7 13 10 | 7 18 0 |
| New Zealand 4½% 1945 | 83½ | 5 7 9 | 6 7 6 |
| New Zealand 5% 1946 | 90½ | 5 10 6 | 6 0 0 |
| Nigeria 5% 1950-60 | 96 | 5 4 2 | 5 5 6 |
| Queensland 5% 1940-60 | 68 | 7 7 1 | 7 12 6 |
| South Africa 5% 1945-75 | 97½ | 5 2 7 | 5 2 9 |
| South Australia 5% 1945-75 | 65 | 7 13 10 | 7 18 0 |
| Tasmania 5% 1945-75 | 67 | 7 9 3 | 7 12 6 |
| Victoria 5% 1945-75 | 69 | 7 4 11 | 7 8 3 |
| West Australia 5% 1945-75 | 70 | 7 2 10 | 7 6 0 |
| The prices of Stocks are in many cases nominal and dealings often a matter of negotiation. | | | |
| **Corporation Stocks.** | | | |
| Birmingham 3% on or after 1947 or at option of Corporation | 63 | 4 14 6 | — |
| Birmingham 5% 1946-56 | 100 | 5 0 0 | 5 0 0 |
| Cardiff 5% 1945-65 | 98½ | 5 1 6 | 5 2 0 |
| Croydon 3% 1940-60 | 67½ | 4 8 11 | 5 4 6 |
| Hastings 5% 1947-67 | 99½ | 5 0 6 | 5 1 0 |
| Hull 3½% 1925-55 | 82½ | 4 4 10 | 4 14 6 |
| Liverpool 3½% Redeemable by agreement with holders or by purchase | 72½ | 4 16 7 | — |
| London City 2½% Consolidated Stock after 1920 at option of Corporation | 53 | 4 14 4 | — |
| London City 3% Consolidated Stock after 1920 at option of Corporation | 62½ | 4 16 0 | — |
| Metropolitan Water Board 3% "A" 1963-2003 | 60½ | 4 19 2 | — |
| Do. do. 3% "B" 1934-2003 | 62½ | 4 16 0 | — |
| Middlesex C.C. 3½% 1927-47 | 85½ | 4 1 10 | 4 16 0 |
| Newcastle 3½% Irredeemable | 72 | 4 17 3 | — |
| Nottingham 3% Irredeemable | 63 | 4 15 3 | — |
| Stockton 5% 1946-66 | 99 | 5 1 0 | 5 1 3 |
| Wolverhampton 5% 1946-56 | 99 | 5 1 0 | 5 1 6 |
| **English Railway Prior Charges.** | | | |
| Gt. Western Rly. 4% Debenture | 81 | 4 18 9 | — |
| Gt. Western Railway 5% Rent Charge | 93½ | 5 6 11 | — |
| Gt. Western Rly. 5% Preference | 73½ | 6 16 1 | — |
| L. & N.E. Rly. 4% Debenture | 70½ | 5 13 6 | — |
| L. & N.E. Rly. 4% 1st Guaranteed | 64½ | 6 4 0 | — |
| L. & N.E. Rly. 4% 1st Preference | 48 | 8 6 8 | — |
| L. Mid. & Scot. Rly. 4% Debenture | 73 | 5 9 7 | — |
| L. Mid. & Scot. Rly. 4% Guaranteed | 65 | 6 3 1 | — |
| L. Mid. & Scot. Rly. 4% Preference | 48½ | 8 4 10 | — |
| Southern Railway 4% Debenture | 74 | 5 8 1 | — |
| Southern Railway 5% Guaranteed | 90½ | 5 10 6 | — |
| Southern Railway 5% Preference | 67½ | 7 8 2 | — |